

भारत का राजपत्र

The Gazette of India.

प्राविकार से प्रकाशित
PUBLISHED BY AUTHORITY

9/5/72

सं. 14]
No. 14]

नई इल्ली, शनिवार अप्रैल 1, 1972/चैत्र 12, 1894
NEW DELHI, SATURDAY, APRIL 1, 1972/CHAITRA 12, 1894

इस भाग में भिन्न पृष्ठ सल्या हो जाती हैं जिससे कि यह अलग सकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

(रक्षा मंत्रालय को छोड़कर) भारत सरकार के मंत्रालयों और (संघ क्षेत्र प्रशासन को छोड़कर) केन्द्रीय प्राविकरणों द्वारा जारी किये गए विधिक आदेश और अधिसूचनाएं।

Statutory orders and notifications issued by the Ministries of the Government of India (other than the Ministry of Defence) and by Central Authorities (other than the Administration of Union Territories).

MINISTRY OF IRRIGATION AND POWER

New Delhi, the 10th March, 1972

S.O. 924.—In exercise of the powers conferred by section 13 of the Inter-State Water Disputes Act, 1956 (33 of 1956), the Central Government after consultation with the State Governments, hereby makes the following rules to amend the Inter-State Water Disputes Rules, 1959, namely:—

1. These rules may be called the Inter-State Water Disputes (Amendment) Rules, 1972

2. For rule 6 of the Inter-State Water Disputes Rules, 1959 the following rule shall be substituted, namely:—

“6. Remuneration, allowances or fees.—(1) The time spent by the Chairman or a Member of a Tribunal who is a Judge of the Supreme Court or of a High Court, shall count as actual service within the meaning of paragraph 11(b)(i) of Part D of the Second Schedule to the Constitution read with section 2(b)(i) of the Supreme Court Judges (Conditions of Services) Act, 1958 (41 of 1958) or section 2(1)(c)(i) of the High Court Judges (Conditions of Service) Act, 1954 (28 of 1954), and accordingly he will continue to draw the remuneration as admissible to him as a Judge of the Supreme Court or of a High Court, as the case may be.

(2) Where the Chairman or any Member of a Tribunal retires from service as a Judge of the Supreme Court or a High Court during the term of office

of such Chairman or Member, he shall be paid for the period he serves as Chairman or Member, after retirement, such salary, which, together with his pension and pension equivalent or any other form of retirement benefit shall not exceed the last pay drawn by him before retirement. He shall be entitled to such allowances and other benefits as are admissible to serving Judges of the Supreme Court or of a High Court, as the case may be.

(3) A person, being a serving Government servant, appointed as an Assessor by a Tribunal, shall be paid salary equivalent to the basic pay drawn by him in his parent Department plus a deputation (duty) allowance as admissible in terms of the Ministry of Finance O.M. No. F.10(24)-EIII/60 dated 4th May, 1961, as amended from time to time. He shall be entitled to draw such allowances as are admissible to him as a serving Government servant.

(4) A person, being a retired Government servant, appointed as a whole-time Assessor by a Tribunal shall be paid such salary which, together with his pension and pension equivalent or any other form of retirement benefit, shall not exceed the last pay drawn by him before retirement or Rs. 3,000/-, whichever is less. He shall be entitled to draw such allowances as are admissible to a serving Government servant.

(5) A person, not being a serving or a retired Government servant, appointed as a whole-time Assessor by a Tribunal, shall be paid such salary as the Tribunal may fix keeping in view his status, experience and qualifications provided that such salary shall not be more than Rs. 3,000/- per mensem. He

shall be entitled to draw such allowances as are admissible to a Government servant of the first grade on such a salary.

(6) A person appointed as a Assessor on part-time basis (whether a retired Government servant or a non-official) shall be paid such remuneration, not exceeding seventy-five rupees per day for the actual days spent on the Tribunal's work, as the Tribunal may fix keeping in view his status, experience and qualifications:

Provided that an Assessor so appointed shall not be paid more than seven thousand and two hundred rupees as remuneration in any one year.

(7) An Assessor whose normal place of residence is not at the headquarters of the Tribunal shall be paid travelling allowance from the place of his residence to the headquarters of the Tribunal and back for attending the Tribunal's work at Arithmatised rate admissible to a Government servant of the first grade.

[No. 8/12/71-WD]

K. V. RAMA RAO, Dy. Secy.

सिवाई श्रीर विद्युत मंत्रालय

नई दिल्ली, 10 मार्च, 1972

का० आ० 924.—अंतर्राजीय जल विवाद अधिनियम, 1956 (1956 का 33) की धारा 13 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केंद्रीय सरकार, राज्य सरकार से परामर्श करने के पश्चात् अंतर्राजीय जल विवाद नियम, 1959 में संशोधन करने के लिए एतद्वारा निम्नलिखित नियम बनाती है, अर्थात् :—

1. ये नियम अंतर्राजीय जल विवाद (संशोधन) नियम, 1972 कहे जा सकेंगे।

2. अंतर्राजीय जल विवाद नियम, 1959 के नियम 6 के स्थान पर निम्नलिखित नियम प्रतिस्थापित किया जाएगा, अर्थात् :—

"6. पारिश्रमिक भत्ते श्रीर फीस :—(1) अधिकरण के ऐसे अध्यक्ष या सदस्य द्वारा जो उच्चतम न्यायालय या उच्च न्यायालय का न्यायाधीश है, अधीत समय को, उच्चतम न्यायालय न्यायाधीश (सेवा की शर्त) अधिनियम, 1958 (1958 का 41) की धारा 2 (ख) (i) या उच्च न्यायालय न्यायाधीश (सेवा की शर्त) अधिनियम, 1954 (1954 का 281) की धारा 2 (1) (ग) (i) के साथ पठित संविधान की द्वितीय अनुसूची के माग व के पैरा ii (ख) (i) के अर्थान्तर्गत वास्तविक सेवा के रूप में गिना जाएगा, और तदनुसार वह वही पारिश्रमिक प्राप्त करता रहेगा जो, उसे, यथास्थिति उच्चतम न्यायालय या उच्च न्यायालय के न्यायाधीश के रूप में अनुज्ञेय है।

(2) जहाँ अधिकरण का अध्यक्ष या कोई सदस्य, उच्चतम न्यायालय या उच्च न्यायालय के न्यायाधीश के रूप में ऐसे अध्यक्ष या सदस्य की पदावधि के दौरान, सेवानिवृत्त होता है वहाँ, उसे सेवा निवृत्ति के पश्चात् अध्यक्ष या सदस्य के रूप में सेवाकाल के लिए उतना सम्बलम दिया जाएगा जो पेंशन और पेंशन समतुल्य या किसी अन्य रूप में प्राप्त सेवा निवृत्ति सुविधा के साथ मिल कर सेवा निवृत्ति से पूर्व उसके द्वारा प्राप्त अन्तिम वेतन से अधिक

नहीं होगा। वह ऐसे भत्तों जौर अन्य सुविधाओं का हकदार होगा जो, यथास्थिति, उच्चतम न्यायालय या उच्च न्यायालय के सेवाधीन न्यायाधीशों को अनुज्ञेय हैं।

(3) अधिकरण द्वारा असेसर के रूप में नियुक्त उस व्यक्ति को, जो सेवाधीन सरकारी सेवक हो, उतना सम्बलम दिया जाएगा जितना उसके मूल विभाग में उसके द्वारा प्राप्त मूलवेतन धन, समय-समय पर यथासंशोधित, वित्त मंत्रालय के ओ० एम० सं० फा० 10(24)-स्था 111/60 तारीख 4 मई 1961 के अनुसार अनुज्ञेय प्रतिनियुक्ति (कर्सव्य) भत्ते के समतुल्य हो। वह ऐसे भत्ते प्राप्त करने का हकदार होगा जो उसे सेवाधीन सरकारी सेवक के रूप में अनुज्ञेय है।

(4) अधिकरण द्वारा पूर्णकालिक असेसर के रूप में नियुक्त उस व्यक्ति को जो सेवानिवृत्त सरकारी सेवक हो, उतना सम्बलम दिया जाएगा जितना उसकी पेंशन और पेंशन समतुल्य या किसी अन्य रूप में प्राप्त सेवानिवृत्ति सुविधा को मिलाकर सेवा निवृत्ति से पूर्व उसके द्वारा प्राप्त अन्तिम वेतन या 3,000/- रु०, जो भी कम हो, से अधिक नहीं होगा। वह ऐसे भत्ते प्राप्त करने का हकदार होगा जो सेवाधीन सरकारी सेवक को अनुज्ञेय है।

(5) अधिकरण द्वारा पूर्णकालिक असेसर के रूप में नियुक्त उस व्यक्ति को जो सेवानिवृत्त सरकारी सेवक हो उतना सम्बलम दिया जाएगा जितना अधिकरण उसकी हैसियत प्रनुभव और अर्हताओं को दृष्टि में रखते हुए नियत करे परन्तु वह वेतन प्रति मास 3,000/-रु० से अधिक नहीं होगा। वह ऐसे भत्ते प्राप्त करने का हकदार होगा जो प्रथम श्रेणी के सरकारी सेवक को उतने सम्बलम पर अनुज्ञेय हों।

(6) प्रांशकालिक आधार पर असेसर के स्थ पर नियुक्त व्यक्ति को (चाहे वह सेवानिवृत्त सरकारी सेवक हो या गैर सरकारी) अधिकरण के काम में विताए वास्तविक दिनों के लिए पचहत्तर रुपए प्रतिदिन से अनधिक उतना पारिश्रमिक दिया जाएगा जितना अधिकरण उसकी हैसियत, अनुभव और अर्हताओं को दृष्टि में रखते हुए नियत करे :

परन्तु इस प्रकार नियुक्त असेसर को किसी भी एक वर्ष के प्रत्यन्दर सात हजार दो सौ रुपए से अधिक पारिश्रमिक नहीं दिया जाएगा।

(7) उस असेसर को, जिसका समान्य निवास-स्थान अधिकरण के मूल्यालय पर नहीं है, अधिकरण के काम पर हाजिर होने के लिए उसके निवास-स्थान से अधिकरण के मूल्यालय तक और वापिसी के लिए उस दर पर यात्रा भत्ता दिया जाएगा जो प्रथम श्रेणी के स कारी सेवक को अनुज्ञेय हो।

[सं० 8/12/71-इन्डन० ५०]

के० वि० रामराव, उप सचिव।

MINISTRY OF LABOUR AND REHABILITATION

(Department of Labour and Employment)

New Delhi, the 7th March, 1972

S.O. 925.—In pursuance of section 17 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Madras, in the industrial dispute between the employers in relation to the management of Messrs. J. M. Baxi and Company, Madras and their workmen, which was received by the Central Government on the 2nd March, 1972.

BEFORE THIRU K. SEETHARAMA RAO, B.A., B.L., INDUSTRIAL TRIBUNAL, MADRAS

Monday the 21st day of February, 1972

Present:—

THIRU K. SEETHARAMA RAO, B.A., B.L.,
Presiding Officer

INDUSTRIAL DISPUTES NO. 79 OF 1971.

(In the matter of the dispute for adjudication under section 10(1) (d) of the Industrial Disputes Act, 1947 between the workmen and the Management of M/s. J. M. Baxi and Company, Madras).

BETWEEN:

The General Secretary,
Madras Port and Dock Workers' Progressive
Union, No. 1, Fourth Line Beach, Madras-1.

AND

Messrs. J. M. Baxi and Company,
21, North Beach Road, Madras-1.

REFERENCE:

Order No. L-33011/12/71/P&D, dated 17-12-1971 of the Ministry of Labour and Rehabilitation, Department of Labour and Employment, Government of India, New Delhi.

This dispute coming on this day for final disposal, upon perusing the reference, and all other material papers on record and upon hearing the argument of Thiru N. S. Kumar, Personnel Officer of the Management and the General Secretary of the Union being absent, this Tribunal made the following

AWARD

The Government of India has referred the following issue for consideration by this Tribunal:—

"Whether the workers employed by Messrs. J. M. Baxi and Company, Madras-1 are entitled to a bonus of 8-1/3 per cent for the years 1969-70 and 1970-71 on the total earnings of the workers? If not, what should be the rate of bonus payable to them?"

(2) Notice in Ex.C-1 was sent by registered post both to the union that had sponsored this dispute and also to the Management. The notice to the union was despatched on 13-1-1972 as seen from Ex.C-2 the postal receipt. I am certain that the Union had received the above notice for hearing on 5-2-1972 and yet the Union did not make its appearance on 5-2-1972 or any subsequent dates till this day. No representation was made on behalf of the union. I take it that the union is not interested in proving the claim for bonus.

(3) The law is well-settled that the burden is on the union to make out the claim.

(4) M.W.I, who is personnel officer for the Management deposed that the union is fully aware of this posting of this Industrial Dispute and that the workers have received in full satisfaction bonus at 4 per cent of the consolidated wages for each of the two years, that is, for 1969-70 and 1970-71. The above pay-

ment of bonus was made after the reference was made and that is why the union is no longer interested in this dispute. M.W.I also proved that nothing more than minimum bonus is payable at all for each of the two years in question.

(5) The award is passed that the workers are not entitled to receive more bonus, than at 4 per cent rate, for each of the two years in issue and they are not entitled to any other relief.

Dated, this 21st day of February, 1972.

(Sd.) K. SEETHARAMA RAO, Industrial Tribunal.
WITNESSES EXAMINED:

For Workmen—None.

For Management—M.W.I—Thiru N. S. Kumar, Personnel Officer.

DOCUMENTS MARKED

For both sides—Nil.

COURT EXHIBIT:

C-1/4-1-72—Summons to the parties from the Industrial Tribunal Madras.

C-2/13-1-72—Postal receipts Nos. 0531 and 0532.

(Sd.) K. SEETHARAMA RAO,
Industrial Tribunal.

NOTE. The parties are directed to take return of their document/documents within six months from the date of the award.

[No. L-33011/12/71-P&D.]

New Delhi, the 13th March 1972

S.O. 926.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal Madras, in the industrial disputes between the employers in relation to the management of Messrs. Shaik Mohammed Rowther Agencies, Madras and their workmen, which was received by the Central Government on the 3rd March, 1972.

BEFORE THIRU K. SEEKHARAMA RAO, B.A., B.L., INDUSTRIAL TRIBUNAL, MADRAS

Wednesday, the ninth day of February,
One thousand nine hundred and seventy-two.
(Constituted by the Central Government)

Present:—
THIRU K. SEETHARAMA RAO, B.A., B.L.,
Presiding Officer

INDUSTRIAL DISPUTE NO. 62 OF 1971.

(In the matter of the dispute for adjudication under section 10(1) (d) of the Industrial Disputes Act, 1947 between the Workmen and the Managements of 1. Messrs. Sheik Mohammed Rowther Agencies and 2. Messrs. K.P.V. Sheikh Mohammed Rowther and Co. (Private) Limited, Madras-1.

BETWEEN:

The Secretary,
The Madras Harbour Workers' Union,
1/73, Broadway, Madras-1

AND

1. Messrs. Sheik Mohammed Rowther Agencies, 16, First Line Beach, Madras-1.
2. Messrs. K. P. V. Sheikh Mohammed Rowther and Co. (Private) Limited, 41, Linghi Chetty Street, Madras-1.

REFERENCE:—Order No. L-33011/3/71-P&D, dated 21-9-1971 of the Ministry of Labour and Rehabilitation, Department of Labour and Employment, Government of India, New Delhi.

This dispute coming on this day for hearing upon perusing the reference, Claim and Counter Statements and all other material papers on record and upon hearing the arguments of Thiru A. S. K. General Secretary of the Union and of Thiru P. Sam, Hon. Secretary of the Association of employers, Madras for Management No. 1 and Thiru S. Meenakshisundaram, Advocate for Management No. 2, this Tribunal made the following:

AWARD

The issue for consideration is what is set out, under the reference by Government of India, as follows:—

"In the context of Clause 6 of the agreement dated the 28th September, 1969, entered into between the Partners of Messrs. K. P. V. Sheik Mohammed Rowther and Company (Private) Limited, Madras—1 and Messrs. Sheikh Mohammed Rowther Agencies, Madras-i, whether the said employers are justified in denying to pay the arrears of wages on account of implementation of Wage Board recommendations for the period from 1st January, 1969 to 31st October, 1969 to the workmen specified below? If not, who should pay the said arrears of wages to the workmen concerned?

1. Shri M. Ghias,
2. Shri Bankaran,
3. Shri Sabir Hussain,
4. Shri Benjamin,
5. Shri M. C. Krishnomoorthi,
6. Shri M. J. Placid
7. Shri R. Samooth; and
8. Shri R. Singaravelin."

(2) The Madras Harbour Workers Union contends that the Wage Board recommendations were made applicable retrospectively with effect from 1-1-1969. The dispute concerns only 8 employees of the 2nd respondent, to be hereafter described as the Original firm (K. P. V. Sheik Mohammed Rowther and Co. (Private) Ltd.). The 8 employees working in the original firm, were taken over to the new firm, known as Messrs. Sheik Mohammed Rowther Agencies, hereafter to be described, as the new firm, who is no other than the 1st respondent.

(3) In the claim statement, the averment is that, under a partition deed it is, that the New firm took over the original firm.

(4) The Union contends that the demand for payment of arrears of wages, as per Wage Board recommendations initially was made with the original firm that entered into a settlement (Ex.M-1). In the claim statement, reference is made to Ex.M-1 agreement that reads that the said eight Dock office staff would be paid arrears of pay as per calculations furnished by the Madras Harbour Workers' Union with effect from 1-1-1969 or a later date, on which the said eight members of the Staff came into the service of Sheik, Mohammed Rowther Agencies (new firm). It is correctly averred in the claim statement that in respect of arrears for the period prior to 1-1-1969, or the date of joining of services in the new firm, it was agreed under Ex.M-1 Settlement, as between the Union and the new firm, that the issue would be taken up by the staff of the Union with the original firm, namely, K. P. V. Sheik Mohammed Rowther & Co. (P) Ltd., (2nd respondent). The names of these eight employees are set out in paragraph 10 of the claim statement.

(5) An additional claim statement was filed to set out as what amount of wages arrears were due to the eight employees. The total amount due to each employee is worked out at page 2 in the additional claim statement, that I have marked as Ex.C-1.

(6) The 1st respondent (the new firm) contended that the reference made by the Government was inoperative and not maintainable in that the Wage Board recommendations were advisory in nature, inasmuch as, unless the firm had the financial status to pay, the recommendation could never be accepted, as binding by any Tribunal. At any rate, it is contended that under the settlement in Ex.M-1, the Union had agreed that in respect of arrears due for the period prior to 1-1-1969, the arrears claim was to be taken up with the original firm (Respondent No. 2). It is urged that the above agreement is a bar against the Union maintaining that the new employer has to pay up arrears due for the period earlier to 1-1-1969. Bar of estoppel is also pleaded, in that under the agreement in Ex.M-1, the new firm agreed to pay the arrears of wages with effect from 1-1-1969, on the representation and understanding concluded with their Union that the prior arrears, prior to 1-1-1969 were to be claimed only from the original firm.

(7) After having got the benefit of implementation of the Wage Board recommendations with the new firm for the period subsequent to 1-1-1969 under the agreement Ex.M-1, it is contended that it is not open to the Union to turn round and say that, even or the prior period, prior to 1-1-1969, the arrears have to be paid, if need be, by the new firm.

(8) The second respondent namely the original firm relied on clause 6 of the agreement as between the first respondent and the 2nd respondent. The agreement dated 20-9-1969 is an agreement of dissolution of partnership, that reads that the out-going partners shall take over the services of such members of the staff, as have been attending to the business of the agency of K. P. V. Sheik Mohammed Rowther & Co. (P) Ltd., or such of the staff that may be found necessary, on the same terms and conditions as are now existing and also bear the retirement and other benefits in respect of such staff, after they came into their service. Any arrears of wages due for the period prior to 1-1-1969, it is so urged by the second respondent, is payable only by the 1st respondent, the new firm, under clause 6 of the above agreement. It is maintained that eight employees were taken into service by the new firm on 1-1-1969, under the same service conditions that prevailed in the past Section 25FF of the Industrial Disputes Act is relied upon to contend that the claim for arrears must be met only by the 1st respondent, the new firm.

(9) There is no writing in the counter statement of the 2nd respondent that the employees are not entitled to Wage Board recommendations arrears, or that the 2nd respondent—original firm has not got the financial capacity to pay same.

(10) As a matter of fact, the learned counsel for the 2nd respondent, the original firm, accepted before me that the Wage Board recommendations have been fully implemented in the other units of the 2nd respondent, and that being so, the plea that the Wage Board recommendations are not implementable on account of any financial position of the firm or otherwise in a plea that is not available to the original firm (Respondent No. 2).

(11) The three conditions laid down in the Proviso to Section 25 FF must be fulfilled, before the transferee can be called upon to meet the retrenchment compensation liability in relation to the employee, when the transferee has taken over the new unit. The conditions are: (i) the services of the workmen should not be interrupted by such transfer; (ii) the terms and conditions should not be less favourable in the new unit; and (iii) thirdly, the new employer must be under the terms of such transfer or otherwise, legally liable to pay to the workmen (in the event of retrenchment) compensation on the ground that his service has been continuous and not at all interrupted by the transfer. In my view, reference to Section

FF is totally irrelevant, in that, I am concerned in this dispute, about arrears of wages that accrued long before the 1st respondent, the new firm came into vogue, or assumed legal entity. I am not concerned with the issue about retrenchment compensation, for no worker had been retrenched and no demand has been made so far, for payment of retrenchment compensation.

(12) The learned Union Secretary relied on the decision reported in 1962 II L.L.J. page 621 (Anakapalia Co-op. Agl. & Industrial Society Vs. Its Workmen). At page 629 in the above decision, Their Lordships of the Supreme Court have observed that, apart from retrenchment compensation claim that can be put forward, no other claim can be made against the transferee of the concern; in other words, retrenchment compensation can be claimed even against the transferee under Section 25FF of the Industrial Disputes Act, but other claims like arrears of wages, on the face of it, cannot be made with the transferee, namely, the new firm.

(13) In law, therefore, arrears of wages must be paid only by the original firm, namely, the 2nd respondent. But then, on behalf of the 2nd respondent, the contention is that in the reference made by the Government, there is writing about clause 6 of the agreement and under that agreement it is, that the 1st respondent is liable to pay arrears of wages for the prior period.

(14) The first respondent, the New firm describes itself as Messrs Shaik Mohammed Rowther Agencies (the new firm). The second respondent, describes itself under the style and address of Messrs K. P. V. Shaik Mohammed Rowther and Company (Private) Limited (original firm).

(15) Ex.M-3 agreement sets out that the old firm was continued by all partners other than the outgoing partners, who were two in number. The outgoing partners constituted the new firm, who is the first respondent. The existing partners continued the old firm known as Messrs K. P. V. Shaik Mohammed Rowther and Company (Private) Limited. The outgoing partners who constituted the new firm (Respondent No. 1) were allotted under Ex. M-3 agreement, the agency business of Scindia Steam Navigation Company Ltd., Bombay at various ports, inclusive of Madras Port, and that is how the outgoing partners, who constituted the New firm (Respondent No. 1) agreed to take over the employees working at the Madras Port under the old firm. Clause (6) of Ex. M-3 agreement reads as follows:—

"The out-going partners shall also take over the services of such members of the staff as have been attending to the business of the Agency of Scindia Steam Navigation Co., Ltd., or such other staff as may be found necessary on the same terms and conditions as are now existing and also bear the retirement and other benefits in respect of such staff after they come into their services."

The New firm was scheduled to commence on 27-8-1969. The argument is advanced that the expression retirement and other benefits means also arrears of wages. As against this, it is rightly contended that the expression, other benefits, cannot include wages due for any period prior to 1-11-1969. The expression benefit will include gratuity or pension, but how can it include wages that were due for the prior period. The employees were promised wages at the same rates for the future period, but for the period prior to 1-10-1969, it cannot be that the new firm is liable to pay that wages. The liabilities taken over by the outgoing partners namely the New firm is limited to Rs. 5.42 lakhs only Ex.M-3. One does not know what is the total liabilities of the old firm, whether it exceeded Rs. 5.42 lakhs or not, but the

fact, however, is that the liability is limited to a specific sum, namely Rs. 5.42 lakhs only. Clause (7) of Ex.M-3 agreement reads, that the continuing partners, namely the old firm is liable for all other liabilities of the old firm, except for its. 5.42 lakhs. It is correctly argued that, when the liability is fixed and determined to a specific sum, nearly Rs. 5.42 lakhs, it cannot be that a specific liability like arrears of wages can be described as the liability of the out-going partners. One has got to distinguish between a specific debt and totality of debts. In other words, liabilities have to be first totalled up, and the New firm is liable only to bear a part of it, to the extent of Rs. 5.42 lakhs only. The above procedure of totalling of debts is not being done, and that being so, it cannot be that the old firm can call upon the New firm to pay up a particular debt. As is correctly argued, if 'A' agrees to pay B's debt to an extent of Rs. 5.42 lakhs, 'A' does not B's debt to an extent of Rs. 5.42 lakhs, 'A' agrees to pay undertake, under the above clause, to pay any particular debt due to 'C'. The liability between A and B under the agreement, like Ex.M-3, can be worked out only and after the old firm shows, that the totality of debts inclusive of arrears due to the employees, does not exceed Rs. 5.42 lakhs. I find that the above process of calculation has not been done and that being so, the liability to pay up the arrears of wages is solely on the old firm and not at all on the New firm. I find accordingly. It is agreed before me that the employees were taken over by the New firm only on 1-11-1969 though Ex.M-3 agreement is dated 28-9-1969. Ex.M-3 agreement reads that the agreement was subject to the condition that Scindia Steam Navigation Co., Ltd., consented to transfer the agency to the outgoing partners (Respondent No. 1) and so it is, obvious that Ex.M-3 agreement really come into vogue only on 1-11-1969. The quantum of arrears appears to be as worked out in the additional counter statement filed by the union, but the exact amount is to be claimed in a petition to be filed under Section 33(c)(2) of the Industrial Disputes Act, as the reference by Government does not call upon me to determine the amount as such. The award is passed that the arrears of wages are due, as per Wage Board recommendations, which recommendations have been accepted by Respondent No. 2, and it is so due to all persons mentioned in the reference and for the period mentioned in the reference and that will be paid, at once, only by the old firm namely, Messrs K. P. V. Shaikh Mohammed Rowther and Company (Private) Limited (Respondent No. 2) and not at all by the first respondent. The award is passed, as stated above,

Dated. this 9th day of February, 1972.

(Sd.) K. SEETHARAMA RAO,
Industrial Tribunal.

Witnesses Examined

For both sides—None.

DOCUMENTS MARKED

For workmen—Nil

For Management—

M-1/5-7-70—Agreement between the union and Shaik Mohammed Rowther Agencies (Management No. 1).

M-2/22-5-70—Letter from the Union and the Management about the implementation of the recommendation of the recommendation of the Central Wage Board for Port and Dock workers.

M-3/28-9-69—Partnership agreement.

Court Exhibit

C-1/3-1-72—Additional claim statement in I.D.No. 62/71 by the Union.

(Sd.) K. SEETHARAMA RAO,
Industrial Tribunal.

[No. L-33011/3/71-P&D.]

O. P. TALWAR, Defty. Secy.

(Department of Labour and Employment)

New Delhi, the 18th March, 1972

S.O. 927.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishing the following award of the Industrial Tribunal No. 2, Bombay in the Industrial dispute between the employers in relation to the Premier Insurance Company, Mysore and their workmen, which was received by the Central Government on the 14th March, 1972.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY.

REFERENCE No. CGIT-2/9 of 1970

Employers in relation to Premier Insurance Company Limited, Mysore.

AND

Shrimati K. R. Radha

PRESENT:

Shri N. K. VANI,
Presiding Officer

APPEARANCES:

For the Employers—Shri K. Damodhara Kurup,
Advocate.For Shrimati K. R. Radha—Shri M. V. Joseph,
Advocate.

INDUSTRY: General Insurance. STATE: Kerala.

Bombay, the 4th March, 1972

AWARD

By order No. 40/25/70-LRI dated 8-9-1970 the Central Government in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) in exercise of the powers conferred by clause (d) of sub-section (I) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred to this Tribunal for adjudication an industrial dispute existing between the employers in relation to the Premier Insurance Company Limited, Mysore and Shrimati K. R. Radha in respect of the matters specified in the schedule as mentioned below:—

"SCHEDULE

"Whether the action of the management of the Premier Insurance Company Limited, Mysore-2, in terminating the services of Shrimati K. R. Radha with effect from 19th May, 1969, was justified? If not, to what relief is she entitled?"

2. The facts giving rise to this reference are as follows:—

3. Shrimati K. R. Radha was serving as Clerk-cum-Typist in the Ernakulam Branch of the Premier Insurance Co. Ltd., Mysore since 20th May, 1965. On 16-5-1969, she made application to the General Manager of the Premier Insurance Co. Limited, through the Branch Manager, Ernakulam Branch for granting her leave for three months from 19-5-1969 (Maternity leave). On 16-7-1969, the Branch Manager of the Ernakulam Branch of the Company informed her that leave applied for 3 months from 19-5-1969 had not been granted by the Head Office because as per standing rules of the company, no married lady would be in the service of the company any that on account of this her letter dated 16-5-1969 was treated as letter of resignation.

4. As the services of Shrimati Radha were terminated she raised an industrial dispute with the General Manager and the Branch Manager of the Premier

Insurance Co. Ltd., by her letter dated 11-5-1970. By this letter she requested them to reinstate her in service immediately with continuity of service, back wages etc. and to grant the Maternity benefit. As the management did not accept her demands, she raised an industrial dispute with the Assistant Labour Commissioner (C), Ernakulam. The Assistant Labour Commissioner (C) tried to bring about conciliation but in vain. He therefore submitted his failure of conciliation report to the Secretary to the Government of India on 6-7-1970. On account of this the Central Government referred this dispute to this Tribunal for adjudication.

5. After the receipt of the reference notices were issued to both the parties.

6. Shrimati K. R. Radha has filed her written statement dated 27-10-1970 before me on 9-11-1970 at Ex. 1/W. She has also filed rejoinder on 20-3-1971.

7. The management has filed written statement dated 26-12-1970 before me on 31-12-1970.

3. According to the management.

- (1) The dispute referred to this Tribunal for adjudication is illegal, improper and bad in law inasmuch as the opponent company is not an Industry as contemplated under Section 2(j) of the Industrial Disputes Act, 1947.
- (2) This Tribunal has no jurisdiction to try and entertain this dispute because Shrimati K. R. Radha is not a workman and because she cannot raise an industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act, 1947.
- (3) Shrimati Radha is not entitled to reinstatement as she has voluntarily abandoned her service with effect from 19-5-1969 under the pretext of maternity leave.
- (4) Shrimati Radha lost her lien on the job as she did not join the service when requested by the Branch Manager, Ernakulam. Shrimati Radha is not entitled to reinstatement.

9. On 21-12-1971 application was received from the employers' advocate by post. The same application is as follows:—

"Ref: Reference CGIT-2/9 of 1970

The matter has since been compromised between the parties and the terms of settlement duly signed by the parties are enclosed. The payment is being made to the employee concerned direct in terms of the settlement."

10. Along with the above mentioned application a settlement signed by both the advocates was received by post. The same is as follows:—

"In the matter of industrial dispute between employers in relation to the Premier Insurance Co. Ltd., Mysore and Smt. K. R. Radha.

In the above reference the parties have reached a settlement, the terms whereof are set out hereunder and the parties therefore jointly pray that the settlement be recorded and the industrial dispute disposed of in terms of this settlement.

Terms of Settlement

1. Without admitting the allegations in the claim statement and rejoinder the Premier Insurance Co. Ltd., Mysore the employers agree to pay an ex-gratia payment of Rs. +00/- (Rupees six hundred only) to Smt. K. R. Radha in full and final settlement of all her claims.
2. Smt. K. R. Radha agrees to withdraw her claim for reinstatement and other reliefs agains

this company and accept the sum of Rs. 600/- (Rupees six hundred only) in full and final settlement of all her claims.

3. The cost of the proceedings before the Tribunal to be borne by the parties.

Dated this 27th day of November, 1971.

The Premier Insurance Co. Ltd.,
Mysore.
For the Premier Insurance Co. Ltd.,
Sd/-

Director

Advocate for Employer
Sd/-

Smt. K. R. Radha,

Sd/-

Advocate for employee.

11. On the receipt of the settlement notice was issued to Smt. Radha directing her to file affidavit in support of the settlement dated 27-11-1971 on or before 22-1-1972. In spite of this notice no affidavit was received.

12. As no affidavit was received from Smt. Radha within the prescribed period, she was again asked to file her affidavit on or before 1-3-1972 by registered notice dated 2-2-1972. The register was served on her. The acknowledgement was duly received with her signature. Even after this she has not sent any affidavit. It can be therefore inferred that she does not want to send any affidavit in support of the settlement and no useful purpose will be served by sending another registered notice to her. It can be also inferred from her conduct in not sending the affidavit that she is not interested in this reference any more as she must have received the amount of Rs. 600/- as informed by the Director to this Tribunal in his letter dated 30-12-1971, which is as follows:—

"No. 1823

Mysore-2 20-12-1971

The Presiding Officer,
Central Govt. Industrial Tribunal No. 2, 4th Floor,
City Ice Bidg., 298, Bazargate St., Port, Bombay-1.

Dear Sir,

Reference No. CGIT-2/9 of 1970

With reference to your letter dated the 7th inst., we have to inform you that the cheque for the amount has been sent in favour of Smt. K. R. Radha only.

Yours faithfully,
for The Premier Insurance Co. Ltd.
Sd/-
Director."

13. It appears from the written statement of the management received in this office on 31-12-1970 that on hearing both the parties the Conciliator, Ernakulam, asked the opponent company to pay a sum of Rs. 500 towards compensation to the applicant. The opponent company after consultation with the General Manager of the Company agreed to pay the said amount to the applicant, but the applicant (Smt. K. R. Radha) and her husband who was then representing her did not agree for the same and that on account of this conciliation had failed.

14. Under the settlement dated 27-11-1971 the employers agreed to pay Rs. 600/- as ex-gratia payment to Smt. Radha in full and final settlement of all her claims. Both the parties also agreed to bear their own costs.

15. It appears from the terms of settlement referred to above that the same is in the interest and for

the benefit of Smt. K. R. Radha as well as the management. As the terms of settlement are fair and just, I accept the same and pass the following orders:—

ORDER

- (1) Award in terms of settlement referred to above in paragraph 9 is made.
- (2) No order as to costs.

N. K. VANI, Presiding Officer,
Central Govt. Industrial Tribunal No. 2, Bombay.

[No. F.40/25/70-LR-I.]

K. D. HAJELA, Under Secy.

(Department of Labour and Employment)

New Delhi, the 22nd March, 1972.

S.O. 928.—In exercise of the powers conferred by sub-section (3) of section I of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby appoints the 2nd day of April, 1972, as the date on which the provisions of Chapter IV (except sections 44 and 45 which have already been brought into force) and Chapters V and VI (except sub-section (1) of section 76 and sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of West Bengal namely:—

"The areas under the jurisdiction of Kalyani Police Station in the district of Nadia declared to be a notified area for the purposes of Chapter IIIA of the Bengal Municipal Act, 1932."

[No. S-38013(7)/72-HI.]

শ্রম শৈর পুনর্বাস মন্ত্রালয়

(শ্রম শৈর রোজগার বিভাগ)

নেই দিল্লী, 22 মার্চ, 1972

কাৰ্য নং ১০ ৯২৮.—কৰ্মচাৰী রাজ্য বীমা প্ৰধনিয়ত, 1948 (১৯৪৮ কা ৩৪) কী ব্যারা ১ কী উপব্যারা (৩) ব্যারা ১৯৭২ কে প্ৰত্ৰীল কে দুসৱে দিন কো উস তাৰিখ কে রূপ মেনে নিয়ত কৰিবলৈ হৈ জিসকো উকত প্ৰতিনিয়ম কে প্ৰথ্যায় ৪ (ব্যারা ৪৪ আৰু ৪৫ কে সিকায় জো পহলে হৈ প্ৰকৃত কী জা চুকি হৈ) আৰু প্ৰথ্যায় ৫ আৰু ৬ (ব্যারা ৭৬ কী উপব্যারা (১) আৰু ব্যারা ৭৭, ৭৮, ৭৯ আৰু ৮১ কে সিকায় জো পহলে হৈ প্ৰকৃত কী জা চুকি হৈ) কে উপবংশ পশ্চিমী বংগল রাজ্য কে নিম্নলিখিত ক্ষেত্ৰে মেনে প্ৰকৃত হৈবলৈ, অৰ্থাৎ:—

“বংগল নগৰ পালিকা প্ৰতিনিয়ত, 1932 কে প্ৰথ্যায় ৩ক কে প্ৰযোজনাৰ্থ নদিয়া জিলে মেনে কল্যাণী পুলিস থানে কী প্ৰধিকাৰিতা কে প্ৰধীন ক্ষত প্ৰধীন ক্ষেত্ৰ ঘোষিত কৰিবলৈ আসে হৈ।

[সং এফ নং-৩৮০১৩(৭)/৭২-এন্সু আই]

New Delhi, the 24th March, 1972.

S.O. 929.—In exercise of the powers conferred by section 99A of the Employees' State Insurance Act, 1948 (34 of 1948), and in supersession of the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department

of Labour, Employment and Rehabilitation (Department of Labour and Employment) No. S.O. 1314 dated the 17th February, 1971, the Central Government hereby directs that for the purpose of assessing the employers' special contribution payable under the notification of the Government of India in the late Ministry of Labour No. S.R.O. 279 dated the 6th February, 1952, (and for determining the amount of contributions, payable under section 45-A of the Employees State Insurance Act, 1948) in respect of the employees of a factory or establishment where for any period an employer does not submit the periodical returns required under the Act and the said notification and where an inspection of the employers' records for such period has not been made with effect from 1st April, 1972, the wages of the employees be calculated at the rate of Rs. 250/- (rupees two hundred and fifty only) per employee per mensem, for arriving at the total wage bill and for determining the employees weekly contribution under the First Schedule of the Employees' State Insurance Act, 1948.

[No. S. 38011/1/72-HI]

DALJIT SINGH, Under Secy.

नई दिल्ली, 24 मार्च, 1972

का० आ० 929.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 99क द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और भारत सरकार के श्रम, रोजगार और पुनर्वास मंत्रालय (श्रम और रोजगार विभाग) की अधिसूचना संख्या का० आ० 1314 तारीख 17 फरवरी, 1971 को अधिकारित करते हुए केन्द्रीय सरकार एवं द्वारा निदेश देती है कि भारत सरकार के भूतपूर्व श्रम मकालय की अधिसूचना संख्या का० नि० आ० 279 तारीख 6 फरवरी, 1952 के अधीन, जहाँ किसी अवधि के लिए कोई नियोजक अधिनियम श्रौत उक्त अधिसूचना के अधीन अपेक्षित कालिक विवरणियाँ प्रस्तुत नहीं करता और जहाँ ऐसी अवधि के लिए नियोजकों के अभिलेखों का निरीक्षण पहली अप्रैल, 1972 से नहीं किया गया हो, किसी कारबाने या स्थापन के कर्मचारियों की आवत देय नियोजक के विशेष अभिदाय का निर्धारण करने के प्रयोजन के लिए (और कर्मचारी राज्य बीमा अधिनियम, 1948 की धारा 45क के अधीन देय अभिदायों की रकम का अवधारण करने के लिए) कुल मजदूरी बिल का पता लगाने के लिए और कर्मचारी राज्य बीमा अधिनियम, 1948 की प्रथम अनुसूची के अधीन कर्मचारियों के साप्ताहिक अभिदाय का अवधारण करने के लिए कर्मचारियों की मजदूरी की संगणना 250 रु० (केवल दो सौ पचास रुपये) प्रति कर्मचारी प्रति मास की दर से की जायेगी।

[सं० फा० एस-38011/1/72-एच० आई०]

दलजीत मिह, अवर सचिव।

(Department of Labour and Employment)

New Delhi, the 24th March 1972

S.O. 930.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal (No. 2), Dhanbad, in the industrial dispute between the employers in relation to the Head Office of the National Coal Development Corporation Limited at Ranchi, and their workmen, which was received by the Central Government on the 18th March, 1972.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2) AT DHANBAD

PRESENT:

Shri Nandagiri Venkata Rao, Presiding Officer.

REFERENCE NO. 244 OF 1967

In the matter of an industrial dispute under Sec. 10(1)(d) of the Industrial Disputes Act, 1947.

PARTIES:

Employers in relation to the Head office of the National Coal Development Corporation Limited at Ranchi.

AND

Their workmen.

APPEARANCES:

On behalf of the employers:

Shri S. S. Mukherjee, Executive Committee Member Indian Colliery Owners' Association.

On behalf of the workmen:

Shri Ranen Roy, Advocate.

STATE: Bihar.

INDUSTRY: Coal.

Dhanbad, 14th March, 1972

AWARD

The Central Government, being of opinion that an industrial dispute exists between the employers in relation to the Head Office of the National Coal Development Corporation Limited at Ranchi and their workmen, by its order No. 1/22/67-LR II dated 19th July, 1967 referred to this Tribunal under Section 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication the dispute in respect of the matters specified in the schedule annexed thereto. The schedule is extracted below:

SCHEDULE

"(1) Whether the management is justified in making the posts of Assistant Superintendents and Superintendents inter-changeable? If not, how should resultant vacancies of Assistant Superintendents be filled, the criteria to be followed in filling such vacancies and the financial benefits to be given?

(2) Whether the action of the management in transferring Shri T. P. G. Pillai, Senior Estimator from Gidi Washery of the National Coal Development Corporation Limited to Kathara Washery was justified? If not, to what relief is the workman entitled?

(3) Whether the demand for reinstatement of the following workmen with retrospective effect, is justified:—

- (i) Shri B. K. Singh, L. D. Clerk;
- (ii) S/Shri Raghbir Singh, Rajendra Dubey and Rajendra Prasad, all watchmen;
- (iii) Shri Ram Rup Sharma, Conveyor Operator, Shri Shyam Narayan Singh, Mechanical Fitter (Helper);
- (iv) Shri S. S. Thakur, watchmen-cum-time keeper;
- (v) Shri M. Banerjee and others of Central Workshop, Barkakana.

If so, to what relief are they entitled?

(4) Whether the demand that all the workmen of the headquarters office at Ranchi should be supplied free electricity, free drinking water and free coal is justified? If so, to what relief are the workmen entitled?

(5) Whether the demand that all the workmen of the headquarters office at Ranchi should be provided

with free transport facilities from their respective colonies/residences to place of duty and back is justified? If so, to what relief are they entitled?

(6) Whether the management was justified in drawing up a seniority list of Engineering Assistants which resulted in the supersession of Shri S. K. De? If not, to what relief is the workmen entitled?

(7) Whether the seniority of Shri R. L. Thakur, Assistant Superintendent has been fixed as per rules? If not, to what relief is he entitled?

(8) Whether the promotions in the various grades of Ministerial staff made by the management with effect from the 1st July, 1966 which resulted in a number of supersessions were in order? If not, to what relief are the workmen, adversely affected, entitled?

(9) Whether the demand that all Saturdays should be declared half-working days for all employees or alternative Saturdays should be declared as full holidays and working hours on other day be reduced by 30 minutes, is justified? If so, to what relief are the workmen entitled?

(10) Whether the demand for the adoption of a Family Pension Scheme on a sliding scale for different categories of employees on the basis of their monthly salary payable in the event of the death of an employee, in service, to the dependants, subject to a minimum of Rs. 50 for the lowest category, with retrospective effect from the 1st January, 1964, is justified? If so, to what relief are the workmen entitled?

(11) Whether the demand that either all restrictions which were imposed on re-imbursement of medical bills since 1-3-1964 should be withdrawn and full re-imbursement of all medical bills for treatment taken by the employees and their family members (family to include dependent parents, sisters, and brothers below 21 years of age) from any registered medical practitioner, or that all employees be granted medical allowance at 12½ per cent of total emoluments every month, along with salary, is justified? If so, to what relief are the workmen entitled?

(12) Whether the demand that the recommendations of the Second Pay Commission be implemented forth-with with retrospective effect from the 1st July 1959 and all disparities and anomalies existing in the pay scales of different categories of employees should be removed and arrears should be paid without any further delay, is justified? If so, to what relief are the workmen entitled?

(13) Whether the demand that joint seniority of all structural and civil draftsmen should be implemented immediately along with financial and other benefits with retrospective effect and payment of arrears should be made in terms of the tripartite agreement dated the 21st September 1965, is justified? If so, to what relief are the workmen entitled?

(14) Whether the demands that an employee who is engaged on duty on Sundays should be granted off duty on another day and overtime should be paid at double the rates and that an employee who is engaged on duty on holidays should be paid overtime allowance at double the rates, are justified? If so, to what relief are the workmen entitled?

(15) Whether the demands that the period of duty of drivers should be fixed as 7 hours as in the case of other monthly paid employees including lunch recess and any period spent on duty beyond 7½ hours should be treated as overtime and overtime allowance paid at double the rates and that overtime allowance should be paid for duty on holidays and Sundays and a minimum of Rs. 5 should be paid as daily allowance per day, are justified? If so, to what relief are the workmen entitled?

(16) Whether the demand that all employees should be granted full re-imbursement of leave travel concession from the place of posting to home town and back once a year for an employee and his family, with immediate effect, is justified? If so, to what relief are the workmen entitled?

(17) Whether the demand that four sets of summer uniforms/liveries and one set of winter uniform should be supplied every year in time to all class IV employees, Security Guards, Drivers, Machinemen, Sweepers, Packers, Compositors and that the rate of washing allowance be increased to Rs. 10 per month or 10 per cent of the salary, is justified? If so, to what relief are the workmen entitled?

(18) Whether the demands that all Security Guards residing in barracks should be exempted from payment of rent and charges for electricity and granted barrack allowance is justified? If so, to what relief are the workmen entitled?

(19) Whether the demand that all Class IV employees should be provided either with rent free quarters or actual expenses on house rent should be reimbursed and that employees who are allotted quarters at Ranchi should be paid compensatory allowance, are justified? If so, to what relief are the workmen entitled?"

2. The National Coal Development Corporation Ltd. is registered as a company under the Company's Act, 1956. It is a private company limited by shares. It has come into existence with effect from 1st October, 1956, taking over the 11 collieries then known as the State Collieries. Out of them 8 were in Bihar, 2 in Orissa and 1 in Madhya Pradesh and they were owned and managed by the Government of India. These collieries were under the management of the Railway Board and the management of all of them with the exception of Argada in Bihar, Deulbera in Talchar, was transferred to the Ministry of Supply on 1st June, 1944 and eventually to the Ministry of Production, Government of India. The management of Argada colliery in Bihar and the Deulbera colliery in Talchar, which were owned by the Bengal Nagpur Railway was taken over by the Government of India on 1st October, 1944. The employees who were in service in these state collieries prior to the transfer of their management continued to be governed by the Railway Service Rules; and those who were appointed after the transfer, came under the Central Government Civil Service Rules. Thus, labour and other staff in these collieries were under either the Railway Service Rules or the Central Government Civil Service Rules. The Government of India by different resolutions adopted for the daily rated workers, both time rated and piece rated, the Award of the Conciliation Board, Bengal & Bihar, 1947, the Korea Award of 1947 and the Talchar Award of 1948 for the State Collieries of Bihar, Madhya Pradesh and Orissa, respectively. These Awards were applicable only to those workers who were not monthly paid and the monthly paid were governed by rules framed by the Government of India. The Award of the All India Industrial Tribunal (Colliery Disputes) (Mazumdar Award) considered the pay and service conditions of the monthly paid employees under both the two service rules applicable to them more advantageous than those applicable to the corresponding categories of workmen in the market collieries. The monthly rated employees of the State Collieries were accordingly allowed to retain their own service conditions. The only change effect by the Award in the service conditions of these workmen was the introduction of underground allowance which was 12½ per cent of the basic earnings and was available to those whose monthly basic earnings did not exceed Rs. 96. The Labour Appellate Tribunal rejected the claim of the workmen that the workmen appointed after transfer of ownership of the State Collieries to the Government should also be governed by the Railway Service Rules.

The Labour Appellate Tribunal also rejected the contention of the workmen that the maximum of the lowest scale of the clerical staff was not available to the non-matriculate clerks. But the Tribunal directed that wherever better scales assuring substantial higher emoluments have been provided in the market collieries by the decision of the labour appellate tribunal, the State collieries shall adopt those scales for the corresponding categories of workmen in their collieries. After the National Coal Development Corporation Ltd. was formed with effect from 1-10-1956 new appointments were made and those employees are governed by the Corporation Rules. Thus, the monthly paid employees of the National Coal Development Corporation Ltd. at present constitute of three categories—(i) those governed by the Railway Rules, (ii), those governed by the Central Government Rules, and (iii) those governed by the Corporation Rules. Since its formation the National Coal Development Corporation Ltd. has increased its collieries and at present is having a number of collieries in different States of India and is having its registered office at Ranchi in the State of Bihar. With the main object of organizing the employees of the National Coal Development Corporation, Ltd. and to strive for their welfare and to protect their rights the National Coal Organisation Employees Association was formed and it is a registered union. Its central office also is situated at Ranchi. There have been several agreements between the employers and the employees. Ultimately the National Coal Organisation Employees Association served a strike notice on the National Coal Development Corporation, Ltd. on 17-4-1967 accompanied by a charter consisting of 51 demands which, conciliation having failed gave rise to the present reference consisting of 19 main items. Broadly speaking, they relate to (1) Pay scales and allowances, (2) service conditions, (3) seniority and promotions, (4) transfers and (5) reinstatement of some employees. Parties filed statements and rejoinders.

3. For the sake of brevity, the National Coal Development Corporation, Ltd. will be referred to herein-after as the NCDC, the National Coal Organisation Employees Association as the NCOEA, the written statement of the NCDC dated 3-11-1967 and filed on 7-11-1967 as WSM (i), the written statement of NCOEA dated 15-1-1968 and filed on 19-1-1968 as WSA (i), the rejoinder of the NCDC dated 1-4-1968 and filed on 3-4-1968 as WSM (ii) and the rejoinder of the NCOEA dated 31-5-1968 and filed on 3-6-1968 as WSA (i). The NCDC was represented by Shri S. S. Mukherjee, Executive Committee Member, Indian Colliery Owners' Association and the NCOEA by Shri Ranen Roy, Advocate. On admission by the NCOEA, Exts. M1 to M32 and M235 for the NCDC and on admission by the NCDC, Exts. W.1 to W.198 for the NCOEA were marked. On behalf of the NCDC 29 witnesses were examined and Exts. M33 to M234 were marked. The NCOEA examined 27 witnesses and marked Exts. W.199 to W.245. Arguments of parties were heard on several dates and on 8-12-1971 written rejoinder arguments on behalf of the NCOEA were submitted.

4. Preliminary objections.

In para 4 of WSM—(i) the NCDC has taken the objection that because the Head Office of the NCDC as such is not an "Industry" as defined in the Industrial Disputes Act, 1947 the present reference is outside the purview of the Industrial Disputes Act, 1947. In para 14 of WSA—(i) the NCOEA has stated that the NCDC is a single organisation and is one industry and as such it is an "Industry" within the meaning of Sub-section (j) of Section 2 of the Industrial Disputes Act, 1947 read with its memorandum and articles of association. The present reference is made by the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) by the Government of India which is the Central Government. In order to justify the reference by the Central

Government under Section 10 of the Industrial Disputes Act, the Central Government should be the 'Appropriate Government' as defined in Section 2(a) (i) of the Act. According to the relevant portion of the definition the Central Government is the 'Appropriate Government' in relation to any industrial dispute concerning "any industry carried on by or under the authority of the Central Government" or "a mine". The present reference is for adjudication of the dispute as between "the employers in relation to the Head Office of the NCDC at Ranchi and the workmen". The function of the Head Office are mentioned by the NCDC in WSM—(i) paras 1 to 14 as the general administration, accounts, finances, etc and by the NCOEA in WSA—(i) paras 1 to 14 as technical, project, store and medical in addition to the functions pointed out by the NCDC. The objection of the NCDC is based on two grounds viz. (1) that the Head Office of the NCDC is not an "Industry carried on by or under the authority of the Central Government" and (2) that the Head Office is not "a mine" within the meaning of S. 2(lb) of the Industrial Disputes Act read with S. 2(j) of the Mines Act. For support a number of decisions of the Supreme Court and High Courts are relied upon. In Sirajuddin and Co. v. their workmen (1962—L.L.J 450) the dispute referred to the Fourth Industrial Tribunal by the Government of West Bengal was as between employers in relation to the Head Office at Calcutta of Sirajuddin & Co. and their workmen and the preliminary objection raised was against the validity of the reference by the State Government, contending that under S. 2(a) of the Industrial Disputes Act the 'Appropriate Government' which could make a valid reference in relation to the dispute was the Central Government and not the State Government of West Bengal and, as such the reference made by the latter Government was unauthorised and the Tribunal had no jurisdiction to deal with it. In that case also the functions of the Head Office at Calcutta of Sirajuddin & Co. were similar to those of the Head Office of the NCDC in the present case. After discussing the various provisions of the Industrial Disputes Act and the Mines Act his Lordship has held that the Head Office was not a mine and so, an industrial dispute raised by the employees engaged in the Head Office was not an industrial dispute concerning a mine. It is further pointed out the work in the Head Office was wholly unconnected with mining operations and as such it was not incidental to or connected with the mining operations. In Heavy Engineering Mazdoor Union V. State of Bihar and others (1968—L.L.J 421) was a case similar to the present one before the Patna High Court. It related to the industrial dispute between the Heavy Engineering Corporation, Ltd. Ranchi and their workmen referred to by the State Government of Bihar to the State Tribunal. Shri Ranen Roy, who was representing the workmen in that case also had challenged the validity of the Reference and one of the grounds was that the 'Appropriate Government' to make the reference was the Central Government and not the State Government. His argument was that in view of the extensive nature of the powers conferred on the Central Government to regulate even day to day working of the company, including the sanction of project allowances and other salaries of the employees it should be held that it was a company carried under the authority of the Central Government. After discussing a number of decisions it was held that Heavy Engineering Corporation, Ltd. as a company had a distinct legal existence having a legal persona of its own distinct from the Government and industry owned by the company and carried on according to the provisions of the memorandum and articles of association could not be said to be carried on under the authority of the Government. It was also pointed out that the mere fact that the share holders of the company are none else but the President and some officers of the Government of India could not in any way affect the separate identity of the company. The same case was consid-

by the Supreme Court in Heavy Engineering Mazdoor Union and State of Bihar and Others (1969-19-F.L.R.27). The Supreme Court agreed with the Patna High Court and dismissed the appeal. I do not find any difference in the Constitution and nature of work between that of the Heavy Engineering Corporation, Ltd. and the NCDC. Another similar case considered by the Supreme Court was in Dr. S. L. Agarwal v The General Manager, Hindusthan Steel Ltd. (Civil Appeal No. 524 of 1967, decided on 19th December, 1969). There also their Lordship expressed the view that the Corporation, Hindusthan Steel Ltd., was not a department of the Government. Referring to the decision in Praga Tools Corporations v. C. V. Imanal and others the Supreme Court has specifically pointed out that being registered under the Company's Act the Corporation had a separate legal existence and could not be said to be either a Government corporation or an industry run by or under the authority of the Union Government. In S. R. Tewari v the Presiding Officer, Central Government Industrial Tribunal (No. 2) and another was a dispute between the East Indian Coal Co. Ltd. and S. R. Tewari. The East Indian Coal Co. Ltd. has several coal mines and a Central office to look after the management and sale side of the mines which are situated at different places. S. R. Tewari was a clerk working in the accounts section in the Central Office of East Indian Coal Co. Ltd. In respect of his discharge from service an industrial dispute was referred by the Central Government to this Tribunal. This Tribunal had held that the reference was incompetent and bad in law on two grounds, one of them being that the workman was employed in the Central Office of the company and, as such the 'Appropriate Government' was not the Central Government to make the reference. The Award of this Tribunal was challenged by the workmen before the Patna High Court in C.W.J.C. 369 of 1969. The High Court agreed with this Tribunal on the point and dismissed the Writ Petition. As a result of the above discussion I find that the Head Office of NCDC is not an "industry carried on by or under the authority of the Central Government" and also that the Industrial Dispute under consideration is not concerning a "mine".

5. But Shri Ranen Roy has pointed out another part of the definition of the "Appropriate Government" provided in S. 2(a)(i). The definition also states that "Appropriate Government" in relation to any industrial dispute "concerning any such controlled industry as may be specified in this behalf by the Central Government" means the Central Government. The words "or concerning any such controlled industry as may be specified in this behalf by the Central Government" were inserted in the definition by S. 32 of Act No. 65 of 1951. The Industries (Development and Regulation) Act, 1951 (Act LXV of 1951) came into force on the 8th May, 1952. S. 2 of this Act provides for "declaration as to expediency of control by the Union". The section says "it is hereby declared that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule". The First Schedule refers to any industry engaged in the manufacture or production of any of the articles mentioned under each of the headings or sub-headings shown in the Schedule and coal is found under sub-heading (1) of heading 2, Fuels. On behalf of the NCOEA an extract of the Gazette publication dated 5-1-1957 of S.R.O. 68 is submitted which is as follows:

"In pursuance of sub-section (i) of clause (a) of S. 2 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby specifies for the purpose of that sub-clause the controlled industry engaged in the manufacture or production of coal, including coke and other derivatives which has been declared as a controlled industry under S. 2 of the Industries (Development and Regulation) Act, 1951 (65 of 1951)".

Thus, coal industry is a controlled industry under S. 2 of the Industries (Development and

Regulation) Act, 1951 and it is specified as such for the purpose of the definition of "Appropriate Government" provided in S. 2(a)(i) of the Industrial Disputes Act and the two conditions laid down therein are fully satisfied. Hence, I find considerable force in the argument submitted by Shri Ranen Roy and on this ground I hold that the Central Government was the "Appropriate Government" for making the reference. I do not find any substance in the contention that the Head Office of the NCDC as such is not an "industry" as defined in the Industrial Disputes Act. Let me repeat for the sake of clarification that what I have found in the above paragraph is that the NCDC being a registered company is not an "industry carried on by or under the authority of the Central Government" and that the industrial dispute referred to is not concerning a "mine". I did not, and I could not hold that the Head Office of the NCDC as such is not an "industry" as defined in the Industrial Disputes Act as contended by the NCDC. In Sirajuddin and Co. v their workmen (1962-1-L.L.J. 450) it was held that the Head Office at Calcutta of Sirajuddin and Co. was not a mine and in Heavy Engineering Mazdoor Union v State of Bihar and Others, (1968-1-L.L.J. 421) and other cases referred to by me in the above paragraph it was held that "industry" of a registered company cannot be construed as an industry carried on under the authority of the Central Government. No authority is cited to support the proposition that the Head Office of a registered company owning one or more industries is not an industry.

6. Before taking up the items of the reference, I propose to deal with the controversy between the parties as regards the scope and limitations of the reference. As pointed out earlier, the NCDC at present is having its collieries and open cast mines in Bihar, Orissa and Madhya Pradesh and its registered office is at Ranchi. It appears that the NCDC has its offices also at Calcutta and Delhi. The order of reference No. 1/22/67-I.R.II dated 19th July, 1967 states that the Central Government, was of opinion that an industrial dispute existed between the employers in relation to the Head Office of the NCDC at Ranchi and their workmen in respect of the matters specified in the Schedule annexed thereto, that the Central Government considered it desirable to refer the said dispute for adjudication and that, as such the Central Government referred the dispute for adjudication to this Tribunal. The argument of Shri S. S. Mukherjee is that in view of the order of reference the Tribunal has limited jurisdiction to adjudicate the dispute and it is only to the extent of the employees of the Head Office at Ranchi of the NCDC and the grievances of the employees of any other office of the NCDC at any other place are not within the jurisdiction of the Tribunal. Of course, he has conceded that it could be extended to other units provided it could be shown that the employees of the Head Office have direct and substantive interest with other units as stated in S.2(k) of the Industrial Disputes Act. This contention is denied by the NCOEA and it is urged on their behalf that the intention of the Central Government is for adjudication of the dispute of all the employees of the NCDC irrespective of the office in which they are serving and of the place where the office is situated. It is true that if the order of reference is ambiguous the reference should not be thrown out but the intention should be inferred from the pleadings of the parties. But in the instant case the wording of the order of reference does not create any doubt or ambiguity. If the intention of the Central Government was to refer the dispute as between the NCDC and its employees as a whole I do not see why the Central Government should take particular care to describe the employers as "in relation to the Head Office of the NCDC at Ranchi" instead of simply saying "in relation to the NCDC." For this reason I find force in the contention of the NCDC and this limited scope of adjudication will be borne in mind while dealing with the items of the reference.

7. Item No. 12:

"Whether the demand that the recommendations of the 2nd Pay Commission be implemented forthwith with retrospective effect from the 1st July, 1959 and all disparities and anomalies existing in the pay scales of different categories of employees should be removed and arrears should be paid without any further delay, is justified? If so, to what relief are the workmen entitled?"

The report of the 2nd Pay Commission is Ext. W. 224. The Commission of Enquiry was appointed to examine the principles which should govern the structure of emoluments and conditions of service of the Central Government employees, to consider and recommend what changes in the structure of emoluments and conditions of service of different classes of Central Government employees were desirable and feasible and to recommend, in particular, the extent to which benefits to central government employees should be given in the shape of amenities and facilities. The case of the NCDC NCOEA in brief is that the NCDC had entered into an agreement with the NCOEA agreeing for the "full implementation of the 2nd Pay Commission's recommendations" with effect from 1st July, 1959, that as per the agreement the NCDC was committed to the full implementation of the 2nd Pay Commission's recommendations in toto and in every detail and in respect of each and every recommendation with effect from 1st July, 1959, that the NCDC introduced the pay scales and service conditions arbitrarily owing to which numerous anomalies in the pay scales and service conditions of the employees have arisen and that, as such the NCDC should be directed to implement the recommendations of the 2nd Pay Commission in full, set right the anomalies and pay the arrears to the employees with effect from 1st July, 1959. The NCDC has pleaded that the 2nd Pay Commission considered the pay scales and service conditions only of the central government employees, that the recommendations of the commission did not apply to the Government of India undertakings, as such the NCOEA has no legitimate claim for implementation of the Pay Commission's recommendations in respect of the employees of the NCDC, that, however, the NCDC felt that the Pay Commission's recommendations with regard to the pay scales and dearness allowance as accepted by the Government of India be made applicable to the employees, that the new scales, the Central Civil Services (Revision of Pay) Rules, 1960 have been adopted and implemented by the NCDC and that the NCDC has implemented other recommendations of the Pay Commission to the extent accepted by the Government of India. The NCOEA concedes that the recommendations of the 2nd Pay Commission as they are, are not applicable to the employees of the NCDC but for the agreement. The agreement pleaded by the NCOEA is not admitted by the NCDC. Now, it is to be seen how far the said agreement is proved and whether as per the agreement the NCDC was bound to implement all recommendations of the 2nd Pay Commission in toto irrespective of the fact whether they are accepted and implemented by the Government of India or not. To infer the agreement following Exts are relevant. Exts. W. 173 dated 11th April, 1961, M. 54 dated 12th May, 1961, W. 29 dated 13th July, 1961, W. 201 dated 5th August, 1961, W. 202 dated 5th September, 1961 and W. 203 dated 7th September, 1961. W. 173 is an office order and contains two decisions of the Board of Directors. The decisions are that the revised scales of pay as contained in the C.C.S. (Revision of Pay) Rules, 1960 will be made applicable to the headquarters staff, including supervisory staff of various technical cadre, on scales of pay upto Rs 600—1150 with effect from 1st November, 1960 and that an ex-gratia payment on the basis of the revised pay and allowances will also be made for the period 1st July, 1960 to 31st October, 1960. In the decisions there is no reference to the 2nd Pay Commission's recommendations. The 2nd Pay Commission's recommendations are mentioned only in the subject of the office order.

This office order also agreed to grant house rent allowance subject to certain conditions. Ext. M. 54 is a letter from the NCOEA to the Board of Directors placing before them for consideration some demands. The first demand was "all recommendations of the 2nd Pay Commission as has been and as will be accepted and implemented by the Government of India from time to time, should be implemented in the NCDC in toto and without any modification with retrospective effect from 1st July, 1959". The demand clearly means that without any modification such recommendations of the 2nd Pay Commission as are accepted and implemented by the Government of India till then and as will be accepted and implemented by the Government of India in future from time to time should be implemented by the NCDC. Ext. W. 29 is a letter from the NCDC to the NCOEA in reply to Ext. M. 54 stating that the demands put forth by the NCOEA through Ext. M. 54 were considered by the Board of Directors meeting held on 30th June, 1961 and the decision of the Board was as below:—

"The Board were of the view that the employees association could not justifiably ask for the full implementation of the pay commission's recommendations as accepted by the Government and yet enjoy certain concessions not recommended by the pay commission which the Board had agreed to under its resolution dated 30th March, 1961 (contained in Ext. W. 173). The Board accordingly desired that the Managing Director should offer to the Association the full implementation of the pay commission's recommendations provided the Association agreed specifically to withdrawal of the concessions referred to above not contemplated by the pay commission and accepted the principle that their terms of service should be guided entirely by such decisions as the Government of India might from time to time take in respect of their civil employees".

It only means that the NCDC had agreed to implement in full the recommendations of the 2nd Pay Commission as accepted by the Government on two conditions, viz. that the NCOEA withdrew the concessions granted to them by the Board through its resolution dated 30th March, 1961 (the house rent allowance contained in Ext. W. 173) and agreed that the terms of service of the employees in future should be guided entirely by such decisions as the Government of India might from time to time take in respect of their civil employees. In the pleading and in the agreement on behalf of the NCOEA the first portion of the decision is not referred to and only the latter portion "the Board accordingly desired that the Managing Director should offer to the Association the full implementation of the Pay Commission's recommendations". But in the earlier portion "Pay Commission's recommendations as accepted by the Government" was clearly mentioned and in Ext. M. 54 the NCOEA had also demanded full implementation of all recommendations of the 2nd Pay Commission as are and will be accepted and implemented by the Government of India. In this view I fail to agree with the interpretation put on Ext. W. 29 by the NCOEA that the NCDC has agreed to implement all the recommendations of the 2nd Pay Commission without any qualification. The decision only means that the NCDC had agreed to implement in full the recommendations of the Pay Commission as accepted and implemented by the Government. Ext. W. 201 is a letter from the NCDC to the NCOEA in reply to a letter of NCOEA dated 21st July, 1961, which perhaps raised questions regarding bonus, gratuity and other retrenchment benefits. This letter, Ext. W. 201 clarified the meaning of the decision of the Board dated 30th June, 1961 (contained in Exhibit W. 29) and stated that the NCOEA should specifically confirm that they had no objection to the withdrawal of house rent allowance announced by the Board in their meeting held on 30th March, 1961 and granted by

Ext. W. 173. The decision also clarified the offer contained in the Board's resolution at their meeting held on 30th June, 1961 (contained in Ext. W. 29) for full implementation of the 2nd Pay Commission's recommendations. The words "full implementation of the 2nd Pay Commission's recommendations" occurring in this letter require to be understood in the sense they are used in the resolution of the Board dated 30th March, 1961 contained in Ext. W. 173 and the resolution dated 30th June, 1961 contained in Ext. W. 29 and also to demand No. 1 in the letter of demands Ext. M. 54 of NCOEA. Through this letter, Ext. W. 201 the NCDC has also clarified that full implementation of the 2nd Pay Commission's recommendations did not apply to bonus, gratuity and other retirement benefits and that the Board's decision dated 30th June, 1961 contained in Ext. W. 29 meant that on condition that the NCOEA confirmed that they had no objection to the withdrawal of the house rent allowance granted through Ext. W. 173, the recommendations of the 2nd Pay Commission would be implemented in full with effect from 1st November, 1959 and that an ex-gratia payment will be made on the basis of these scales for the period 1st July, 1959 to 31st October, 1959. Ext. 202 is a letter from the NCDC to the Secretary, NCOEA dated 5th September, 1961. It refers to a letter of NCOEA dated 28th August, 1961 which was in reply to Ext. W. 201. As per Ext. W. 202 it appears that the Executive Committee and the General Body of NCOEA at their emergent and extraordinary meetings had passed the resolution contending, "that the management has committed breach of faith by revising the previous decision to offer full implementation in view of the clarification which were sought in writing on your request". On this decision, as seen by the letter, Ext. W. 202 the NCDC expressed surprise and stated that the decisions contained in Ext. W. 201 merely clarified the decisions already communicated to the NCOEA and that at no time had the management offered anything beyond full implementation of the 2nd Pay Commission's recommendations in respect of pay and allowances. Thereafter follows Ext. W. 203. The letter of NCDC Ext. W. 201 and its clarifications were considered by the Executive Committee and the General Body of the NCOEA at their emergent and extraordinary meetings held respectively on 3rd and 5th September, 1961 and took decisions. The decision was communicated as annexure to the NCDC through the letter, Ext. W. 203. The unanimous decision of the NCOEA was that the decision of the Board as clarified, in respect of the implementation of the Pay Commission's recommendations be accepted. It follows that the decision contained in Ext. W. 29 as clarified through Ext. W. 201 was accepted by the NCOEA. It means that the NCOEA has accepted that the NCDC should implement the pay scales and allowances as recommended by the 2nd Pay Commission and as accepted by the Government of India with effect from 1st November, 1959 and make ex-gratia payment on the basis of these scales for the period 1st July, 1959 to 31st October, 1959 and that the NCOEA has accepted clarifications made by the NCDC through Ext. W. 201 in respect of bonus, gratuity, etc. So, for the contract or agreement pleaded by the NCDC, the offer of the NCDC was Ext. W. 29 read with Ext. W. 173 and as clarified by Ext. W. 201 and its acceptance by the NCOEA was Ext. W. 203 and for the terms of the agreement the letters Ext. W. 29 read with Ext. W. 173 and Ext. W. 201 should be read together. From this agreement it is not possible to infer that the NCDC had agreed to the full implementation of the 2nd Pay Commission's recommendations in toto and in every detail and in respect of each and every recommendation irrespective of the fact whether all or any of the recommendations are accepted and implemented by the Government of India or not. This view is further supported by subsequent documents also. After receiving the acceptance letter, Ext. W. 203 from the NCOEA, the NCDC issued the memorandum, Ext. W. 171 deciding that the implementation of the 2nd Pay Commission's recommendations in regard to the pay and allowances should be given effect to with effect from 1st November, 1959 with pro-

vision for ex-gratia payment on the same basis from 1st July, 1959 to 31st October, 1959 to the headquarters employees of the organisation in the same manner as has been done by the Government of India and that necessary arrangements should be made to the re-fixation of pay of the employees of the headquarters organisation of the NCDC and payment of arrears, if any, in connection thereto as early as possible. The pay scales referred to in Ext. W. 171 are the same as the C.C.S. (Revision of Pay) Rules, 1960, Ext. M. 235. Ext. W. 225 are the same pay scales revised along with dearness allowance, etc. and extending them to the mining subordinate employees, etc. Ext. M. 223 is a memorandum dated 4th January, 1964 from the NCOEA to the Chairman of the NCDC containing several demands. As regards pay scale the demand was contained in para 6. The demand was to revise the pay scales of the technical staff to bring them in par with that of other organisations. In this memorandum there was no complaint that the NCDC had not implemented the recommendations of the 2nd Pay Commission *in toto*. It shows that even after 3 years of the NCDC introducing the pay scales, Ext. M. 235, which were the recommendations of the 2nd Pay Commission as accepted by the Government, NCOEA had no complaint that the NCDC had not implemented the 2nd Pay Commission's recommendations *in toto*. On the other hand this memorandum, Ext. M. 223 shows that the NCOEA was satisfied and their demand was that the pay scales, Ext. M. 235 should be extended to the technical staff. Ext. M. 75 is a statement of demands dated 12th July, 1964 from the NCOEA. Para I is as follows:

"The existing agreement between the management and the Association on the implementation of the 2nd Pay Commission's recommendations provides for the automatic adoption of pay and allowances *in toto* as may be revised and adopted by the Government of India from time to time."

And the complaint was that "inspite of commitments the pay scales of certain category of staff are yet to be revised. Similarly allowances as adopted by the Government of India are not being paid to the employees." The statement also shows that the agreement was to implement the recommendations of the 2nd Pay Commission to the extent of pay and allowances as accepted by the Government of India and not *in toto* as recommended by the 2nd Pay Commission irrespective of the fact whether they are accepted by the Government of India or not. Ext. W. 227 is a letter dated 12th July, 1964 from the Secretary, NCOEA to the Managing Director, NCDC relating to the charter of demands. Regarding this document Shri S. S. Mukherjee has serious objection stating that it is an office copy introduced through WW. 26, that the NCOEA did not call for the original from the NCDC although they have called for hundreds of documents and that the date under the signature is re-written. I think the objection of Shri S. S. Mukherjee should prevail, inasmuch as no explanation is furnished on behalf of the NCOEA for not producing the document earlier along with other documents or for not summoning the original from the NCDC. Even then, para 2 of Ext. W. 227 says—

"the essence of the offer of the management as accepted by this association on the basis of the Board's resolution of 30th June, 1961 means that (1) first the said recommendations will be implemented *in toto*, (2) after implementation of the said recommendations as such for future the benefits and facilities extended to the central government employees will be automatically applied from time to time to the NCDC employees."

For the meaning of "implementation of the recommendations *in toto*" we have to refer again to the resolution dated 30th March, 1961 which is contained in Ext. W. 173 and the resolution was to implement the recommendations of the 2nd Pay Commission in respect of pay and allowances as accepted by the Government of

India. Ext. W. 43 is a letter to the NCOEA from the NCDC dated 21st September, 1961 stating that the management had fulfilled the demand, which was to the effect that the scales of pay as in force prior to the acceptance of the recommendations of the 2nd Pay Commission by the Government would be suitably and correspondingly revised in accordance with the recommendations of the 2nd Pay Commission as accepted by the Government of India. Ext. M. 222 is a letter from the NCOEA to the NCDC dated 8th January, 1965 enclosing therewith a copy of the resolution adopted by the General Body of the NCOEA at a meeting held on the same day. The resolution is Ext. M. 218. The resolution demanded children's education allowance, enhanced dearness allowance and application of the revised pay scales to the subordinate technical staff, stenographers and compositors. There was no complaint that the NCDC had not implemented the recommendations of the 2nd Pay Commission *in toto*. On the other hand in para 1 it is reiterated that the Board of Directors of the NCDC in their 48th meeting held on 30th June, 1961 had accepted the demand and communicated the same with their letter dated 5th August, 1961 as clarified by the letter dated 5th September, 1961, that the NCOEA had accepted the above offer offered through their letter dated 7th August, 1961 and that "pay and allowances" mentioned in the agreement cannot be interpreted as the salary and dearness allowance alone. The documents referred to in the letter are the same as Ext. W. 29 read with Ext. W. 173 and clarified by Ext. W. 201 and acceptance by the NCOEA, Ext. W. 203. It follows therefore, that as per the agreement the NCDC had to implement the recommendations of the 2nd Pay Commission as regards the pay scales and allowances as accepted by the Government and the pay scales so accepted by the Government are Ext. M. 235. Ext. M. 219 dated 12th January, 1965 is a letter from the NCOEA addressed to the Union Minister enclosing therewith a copy of the resolution, Ext. M. 218 with the same demands as in Ext. M. 222. Ext. M. 221 is a letter from the NCOEA to the NCDC dated 27th January, 1965 enclosing therewith a resolution adopted by the General Body of the NCOEA. The resolution reiterated the previous resolution, Ext. M. 218 complaining that there was no reply to the previous letters and that as such a demonstration would be held. Ext. M. 78 is a strike notice dated 25th February, 1965 accompanied by the demands of the same date. There was no complaint that the NCDC had not implemented the 2nd Pay Commission's recommendations. Ext. M. 77 is the Secretary's Annual Report for the year 1964-65 presented to the Annual General Body meeting of the NCOEA and it is dated 28th May, 1965. The complaint in the report was that the revised pay scales were not extended to the subordinate technical staff, stenographers, compositors and machine men and the pay of comptists, who have passed the confirmatory examination is not fixed. Then comes the settlement, Ext. M. 2 dated 21st September, 1965. It is in the course of conciliation proceedings and falls squarely under S. 18 of the Industrial Disputes Act, 1947. It refers to the strike notice submitted on 25th February, 1965 and 36 points of charter of demands on 12th July, 1964, Ext. M. 75. In these demands, Ext. M. 75, item 1(C) related to the extension of the revised pay scales to the subordinate technical staff, item 1(D) to the stenographers item 1(E) to the compositors and machine men and item 1(F) to the revision of pay scales of comptists. These demands are disposed of in the settlement, Ext. M. 2 in paras 5 & 6. So far there was no complaint that the NCDC had not implemented the recommendations of the 2nd Pay Commission *in toto*. Yet, one more strike notice, Ext. W. 5 dated 17th April, 1967 containing 51 demands was served by the NCOEA on the NCDC and demand No. 36 thereof has given rise to the present item in the reference. The demand is made now for the first time for full implementation of the recommendations of the 2nd Pay Commission and removal of disparities. As a result of scrutiny of all the above documents it emerges that what was agreed to by the parties as regards the recommendations of the 2nd Pay Commission was that the recommendations

to the extent of pay scales and allowances as accepted by the Government would be implemented in respect of the employees of the headquarters at Ranchi and it is not in dispute that the pay scales and allowances as recommended by the 2nd Pay Commission and as accepted by the Government are the C.C.S. (Revision of Pay) Rules, 1960, Ext. M. 235 and the NCDC has implemented them. This inference is also probable by the report of the Central Wage Board for the Coal Mining Industry which has come during the pendency of the reference. In para 7, Chapter VIII at page 60, Vol. I the report says thus:

"In light of recommendations of the 2nd Central Pay Commission as accepted by the Government, the Corporation revised the scales of pay, dearness allowance etc. for their monthly paid employees in terms of these recommendations with effect from 1st July, 1959. Increase in dearness allowance as accepted from time to time by Government for their employees have also been adopted by the NCDC for their staff. Further, in order to attract suitable personnel for subordinate mining supervisory posts the NCDC formulated a cadre scheme for such personnel with a further upward revision in their pay scales."

The report refers to some demands made before the Wage Board on behalf of the workmen of the NCDC, but no demand or complaint seems to have been made that the NCDC was bound to implement the recommendations of the 2nd Pay Commission *in toto* irrespective of the fact whether the recommendations were accepted and implemented by the Government of India or not. Shri Ranen Roy for the NCOEA has argued that independently of the agreement justice demands that all employees of the NCDC doing the same job should get the same scales of pay and allowances and that there should be no discrimination on the basis that some of them are governed by the Central Government rules, some by the railway rules and some by the Corporation rules. It means that the Corporation rules should be scrapped and the protection given to the employees taken over by the NCDC from the Central Government and railways should be removed and best of all the three sets of rules should be introduced. It is not shown if in any of the public undertakings such a situation available. It appears that before the Wage Board also similar demand was made. Para 7 of the report of the Central Wage Board for the Coal Mining Industry referred to above states—

"On behalf of the monthly rated staff of the NCDC who are at present governed by the Central Pay Commission (C.P.C.) scales of pay the following points have been made by their representatives that:—

- (i) They should be entitled to the attendance bonus under the Coal Mines Bohus Scheme;
- (ii) The Railway service rules should be applicable to those governed by the Central Pay Commission scales of pay irrespective of whether they are originally taken over from the railway collieries or subsequently appointed;
- (iii) Certain rules of the Corporation are also made applicable to those governed by Central Pay Commission's scales and/or the railway service rules, which work to the detriment of the workmen. We are unable to accept those demands and contentions which in any case were not accepted by the earlier tribunals as persons governed by the railway rules will naturally waste out. Having considered the parties submission we are of the opinion that these workers should be given their choice of either being on their existing pay scales which are generally in conformity with the Government of India employment or opt for the wage scales and other benefits

recommended by us for the industry as a whole."

It is not known whether the workmen have exercised their option or not and it is not relevant also for the purpose of decision of the item of the reference. My finding as regards the first part of the item is that the demand of the NCOEA that the recommendations of the 2nd Pay Commission be implemented irrespective of the fact whether they are accepted and implemented by the Government of India or not, is not justified and that the recommendations of the 2nd Pay Commission to this extent as accepted and implemented by the Government of India are already implemented by the NCDC. Shri Ranen Roy has also argued that the NCDC is bound to implement the service conditions as recommended by the 2nd Pay Commission as and when they are accepted by the Government of India. The case of the NCDC is that they have implemented the recommendations of the 2nd Pay Commission as regards the service conditions to the extent accepted by the Government of India. On their own admission I find that the NCDC is bound to implement the service conditions to the extent of the monthly paid employees of the Head Office at Ranchi as recommended by the 2nd Pay Commission and as accepted and implemented by the Government of India in respect of their employees.

8. It is argued on behalf of the NCOEA that even the pay scales, C.C.S. (Revision of Pay) Rules, 1960, Ext. M. 235 are not properly implemented owing to which disparities and anomalies in different categories of employees have arisen. The recommendations of the 2nd Pay Commission are Ext. W. 224, the recommendations of the 2nd Pay Commission to the extent of pay scales and allowances as accepted by the Government of India are C.C.S. (Revision of Pay) Rules, 1960 are Ext. M. 235 and the revised pay scales introduced by the NCDC in accordance with Ext. M. 235 are Ext. W. 225. Shri Ranen Roy has argued that in several cases the pay scales revised by the NCDC, Ext. W. 225 are not in accordance with the C.C.S. (Revision of Pay) Rules, 1960, Ext. M. 235. During the arguments he has filed charts showing instances, which, according to him, are full of disparities and anomalies. Shri S. S. Mukherjee also has filed counter charts covering the instances given in the charts submitted by Shri Ranen Roy and contending that in fact the alleged disparities and anomalies are not true. Shri Ranen Roy has pointed out the case of a store keeper as an instance. It is an admitted position that prior to 1st July, 1959 the store keepers in the NCDC were in the pay scales of Rs. 60—220, as can be seen in Sl. No. 10 at page 20 of Ext. W. 225 and the revised scales given from 1st July, 1959 is Rs. 130—300. In Ext. M. 235 store keepers of different places were in different scales of pay. As per page 439/19, item 9 in class III a store keeper in the Indian Government Mint, Bombay was in the scale of Rs. 160—300 and his revised scale is Rs. 168—340, at page 439/29, Sl. No. 1 under class III store keeper in India Security Press was in the scale of Rs. 260—500 and his revised scale is Rs. 325—575 and at page 439/00 at Sl. No. 10 under class III a store keeper of Narcotics Department was in the scale of Rs. 300—500 and the revised scale is Rs. 350—575. The argument of Shri Ranen Roy is that a store keeper in the NCDC is given a scale of Rs. 130—300 plus Rs. 30 per month as special pay, that even if Rs. 30 special pay is added to the initial pay of Rs. 130 the starting revised pay would be only Rs. 160 whereas the starting pay in the lowest grade under Ext. M. 235 is Rs. 168. Shri S. S. Mukherjee has pointed out that keeping in view the existing pay scale of a store keeper in NCDC a search was made in Ext. M. 235 for a store keeper in the same pay scale and the pay scale is revised accordingly. In the NCDC the pay scale of a store keeper was Rs. 80—220, similarly in Ext. M. 235, page 439/24 a store keeper at Sl. no. 2 in class III of India Government Mint Hyderabad was also in the pay scale of Rs. 80—220 and his revised pay scale is Rs. 130—300 and as such, the store keeper in the NCDC also is given the same revised scale of

pay. Shri S. S. Mukherjee has also pointed out that this equation is made as was done by the Government of India as per instance in respect of Upper Division Clerks at Sl. nos. 2 & 3 at page 439/8 of Ext. M. 235, wherein Upper Division Clerks in secretariat and included offices and Upper Division Clerks in non-secretariat offices who were in the same pay scale of Rs. 80—220 are given the same revised scale of pay Rs. 130—300. He further pointed out that the NCDC has not taken only the designation into consideration but also the pay scale of that particular category of employees in the pre-revised scales in Ext. M. 235. Another principle adopted by the NCDC, Shri S. S. Mukherjee pointed out, is that for an employee of NCDC having a particular designation if no corresponding designation is found in Ext. M. 235, the NCDC have searched for the scale of pay equivalent to that of NCDC employee and revised the scale of pay as is done in Ext. M. 235. I consider that in revising the pay scales as in Ext. W. 225 the NCDC has followed a sound principle and in the demand made by the NCOEA for higher revised scales of pay for the category does not appear to be based upon any principle. Hence, I find no disparities or anomalies. Consequently, the workmen are not entitled to any relief.

9. Items 9, 11, 14, 15, 16, 17 and 19:

Item 9:

"Whether the demand that all Saturdays should be declared half-working days for all employees or alternative Saturdays should be declared as full holidays and working hours on other days be reduced by 30 minutes, is justified? If so, to what relief are the workmen entitled?"

Item 11:

"Whether the demand that either all restrictions which were imposed on re-imbursement of medical bills since 1st March, 1964 should be withdrawn and full re-imbursement of all medical bills for treatment taken by the employees and their family members (family to include dependent parents, sisters and brothers below 21 years of age) from any registered medical practitioner, or that all employees be granted medical allowance at 12½ per cent of total emoluments every month, along with salary, is justified? If so, to what relief are the workmen entitled?"

Item 14:

"Whether the demands that an employee who is engaged on duty on Sundays should be granted off duty on another day and overtime should be paid at double the rates and that an employee who is engaged on duty on holidays should be paid overtime allowance at double the rates, are justified? If so, to what relief are the workmen entitled?"

Item 15:

"Whether the demands that the period of duty of drivers should be fixed as 7 hours as in the case of other monthly paid employees including lunch recess and any period spent on duty beyond 7½ hours should be treated as overtime and overtime allowance paid at double the rates and that overtime allowance should be paid for duty on holidays and Sundays and a minimum of Rs. 5 should be paid as daily allowance per day, are justified? If so, to what relief are the workmen entitled?"

Item 16:

"Whether the demand that all employees should be granted full re-imbursement of leave travel concession from the place of posting to home-town and back once a year for an employee and his family with immediate effect, is justified? If so, to what relief are the workmen entitled?"

Item 17:

"Whether the demand that four sets of summer uniforms/liveries and one set of winter uniform should be supplied every year in time to all class IV employees, Security Guards, Drivers, Machinemen, Sweepers, Packers, Compositors and that the rate of Washing allowance be increased to Rs. 10 per month or 10 per cent of the salary, is justified? If so, to what relief are the workmen entitled?"

Item 19:

"Whether the demand that all Class IV employees should be provided either with rent free quarters or actual expenses on house rent should be reimbursed and that employees who are allotted quarters at Ranchi should be paid compensatory allowance, are justified? If so, to what relief are the workmen entitled?"

In respect of these demands pleadings of parties are almost common. According to the NCOEA the demands are based on the recommendations of the 2nd Pay Commission, previous practice and requirements of the employees. The defence of the NCDC is that in the matters covered by these demands the NCDC is following the practice prevalent in the offices of the Government of India, that the demands have no justification and that to meet the demands the NCDC has to incur heavy financial burden. In view of these pleadings I propose to take up these demands together. Under item 12 above I have held that under the agreement the NCDC was bound to implement the recommendations of the 2nd Pay Commission to the extent of pay scales and allowances as accepted by the Government of India. Shri Ranen Roy has conceded that to the extent of service conditions the NCDC was to implement only those recommendations of the 2nd Pay Commission which were accepted and implemented by the Government of India from time to time. I have already pointed out under item 12 that the agreement between the parties is constituted by Exts. W.29, W.173, W.201 and W.203. The extract of the decision of the Board of Directors meeting held on 30th June, 1961 is contained in Ext. W.29 and it stated clearly "the Board accordingly desired that the Managing Director should offer to the association the full implementation of the Pay Commission's recommendations provided the association agreed specifically.....and accept the principle that their terms of service should be guided entirely by such decisions as the Government of India might from time to time take in respect of their civil employees". When this offer was accepted by the NCOEA by Ext. W.203 and agreement was concluded, the NCOEA cannot claim now that the service conditions of the employees should be implemented as recommended by the 2nd Pay Commission irrespective of the fact whether they are accepted and implemented by the Government of India or not. Hence, the first ground pleaded by the NCOEA has no substance. It is also to be remembered that all the employees in respect of whom these demands are made are monthly paid employees and they work only during fixed office hours as is done by employees in the offices of the Government of India. The nature of the work turned out by them also does not appear to me more strenuous or difficult than the work done by the Government employees. All of them work in the office buildings. Of course, if a case is made out that the employees of the NCDC deserve more emoluments or facilities than those enjoyed by the employees of the Government and the demand in that respect is justified, the demand can be considered in view of the previous practice prevalent in the NCDC. In this view I propose to examine each item separately.

(i) Item 9:

The demand is that all Saturdays should be declared half working days or alternate Saturdays should be declared full holidays and that working hours on working days be reduced by 30 minutes. In their written

statement itself the NCOEA has stated that they do not press for the reduction of the working hours by 30 minutes in view of the fact that such reduction has been given effect to since 2nd December, 1967. It is also pleaded that the workmen be given alternate Saturdays as full holidays instead of declaring all Saturdays as half working days. Hence, the demand is now only for giving all alternate Saturdays as full holidays. It is stated that previously all Saturdays used to be half working days and the practice has been changed by the NCDC unilaterally. It is not specifically mentioned when this practice was abolished. In paras 112 and 113 WSA-(I) the NCOEA have pleaded that all Saturdays be treated as half holidays "as before" and demanded the "restoration of half holidays on Saturdays as prevalent before". The NCDC has filed rejoinder, WSM-(II) but they have not denied the previous practice pleaded. The case of the NCDC is that the working hours and observance of the 2nd Saturdays as holidays have already been introduced on the basis of the practice followed in the offices of the Government of India. It is pointed out that previous practice, if any, was acquiesced by the NCOEA as per para 1 of Ext. M54, wherein the NCOEA while demanding implementation of the recommendations of the 2nd Pay Commission as have been and will be accepted and implemented by the Government of India from time to time, had stated grounds to justify the demands. Ground No. 2 was "that the Government of India introduced in its office the new working hours. The NCDC also adopted it immediately even without making any reference to the Board." This apart, as I have already stated, there is no mention when this practice of giving all Saturdays as half holidays was prevalent and there is also no material to show in what manner the NCOEA protested against discontinuance of the practice and kept their demand alive. Hence, the demand cannot be supported on the ground of previous practice also. It is argued that in the collieries and in the offices of the allied establishments the employees are enjoying half working days on all Saturdays and as such employees of the head office should not be deprived of that benefit. Collieries and the offices of the allied establishments must be having their own peculiar circumstances being in rural areas and the employees working in an urban area like Ranchi are on a different footings. No evidence is brought on record to show if employees of any other industrial establishment at Ranchi are enjoying the benefit. There are several other industrial establishments at Ranchi, such as Heavy Engineering Corporation, etc. Hence, I do not find any substance in the demand.

(ii) Item 11:

This demand is for removing all restrictions imposed on reimbursement of medical bills since 1st March, 1964 or in the alternative all employees be granted medical allowance at 12½ per cent of total emoluments every month. Shri S. S. Mukherjee has pointed out that in terms of the reference the dispute was as regards restrictions said to have been imposed on reimbursement of medical bills since 1st March, 1964, that since 1st March, 1964 the NCDC has not enforced any rules or order whereby restrictions on reimbursement of medical bills were imposed, that no dispute with the NCOEA was raised by the NCOEA in respect of restrictions imposed from any other date and that, as such the reference in respect of the demand was bad and should be thrown out. I find force in the legal objection raised by the NCDC. As I have already pointed out under Item 12, the NCDC was formed on 1st October, 1956 and the staff appointed prior to that date was taken over by the NCDC. It appears that the officers and the staff who have been in service prior to 1st June, 1944 are guided by the railway rules and the officers and staff who were appointed during the period from 1st June, 1944 to 1st October, 1956 by the C.S.R. (Civil Service Rules). The earliest set of rules brought on record by the NCDC were Ext. W.63, and they were issued by the Director of Administration on 20th March,

1959. These rules were applicable to the employees appointed directly by the NCDC on or from 1st October 1958. As per these rules, Ext. W.63 any registered medical practitioner of Ranchi was considered as the authorised medical attendant in respect of an employee and his family. The NCDC constructed the Gandhi Nagar Hospital at Ranchi and it has started functioning from 1963 as spoken to by MW.5. As a result of the Gandhi Nagar Hospital starting functioning some alterations were made in the rules applicable to medical attendance for the employees employed at the Head Office at Ranchi and they are Ext. W.162 dated 30th January, 1965. On 12th July, 1964 the NCOEA had submitted a charter of demands, Ext. M75 and the demand No. 31 was as regards full reimbursement of medical bills. It should be noted that this demand was made prior to the Gandhi Nagar Hospital starting functioning. Ext. M79 is another charter of demands dated 25th February, 1965 and demand No. 3 therein was to fix medical facilities. This charter of demands, Ext. M79 was subsequent to the Gandhi Nagar Hospital starting functioning and also subsequent to restrictions imposed by Ext. W.162. These two charters of demands Ext. M75 and Ext. M79 culminated in a settlement, Ext. M2 dated 21st September, 1965 which is the same as Ext. W.4. Paras 15 to 17 of this settlement cover the dispute. According to the paras the timings of the Darbhanga House dispensary and the hospital were suitably adjusted and as regards the demand of the association that employees residing outside the NCDC colonies should be entitled to treatment from the Sadar Hospital, the management agreed to examine the demand keeping in view the financial and other implications. The management also appreciated that attention should be paid and steps taken to ensure continuous improvement of the medical facilities as available in the Gandhi Nagar Hospital both during day and night. In respect of the demand of the association for reimbursement of expenses on treatment of dependants of employees outside Ranchi, the management clarified that such reimbursement was admissible. On this the NCOEA withdrew the strike notice. The contention of Shri S. S. Mukherjee is that the demands for full reimbursement and fixing of medical facilities having been settled by the settlement, Ext. M2, it was binding on the NCOEA and the NCOEA could not put forth the same demand once again. The present medical attendance rules of the NCDC are at page 46 onwards in the Corporation rules, Ext. M33, and they apply to all Corporation servants whose conditions of service are prescribed by rules made or deemed to be made by the Corporation when they are on duty, leave or deputation service in India or when under suspension. They do not apply to Corporation servants who are on leave or deputation abroad. Inspite of the settlement, Ext. M2, the NCOEA put forth the demand again through the strike notice Ext. W.5 dated 17th April, 1967, Item No. 34, on the basis of which the present item is referred for adjudication. Pending the reference a circular, Ext. M99 was issued on 27th March, 1968, allowing reimbursement upto a maximum limit of Rs. 100 in each case of the employees and their family members who are not residing in the Corporation accommodation, for the medical treatment obtained at the government hospitals/by government doctors or by the private medical practitioners, in case where recognised government hospitals or government doctors are not available in the locality. This is perhaps in view of the fact that employees residing outside the colony are likely to incur expenditure on urgent and immediate requirements of medical aid. The cumulative effect of the medical attendance rules contained in Ext. M33 read with the circular, Ext. M99 is that all the employees are entitled to treatment in the Gandhi Nagar Hospital and the Darbhanga House dispensary and the employees residing outside the colonies are further entitled to receive by way of reimbursement a maximum of Rs. 100 for each span of illness when they receive treatment even from the private registered medical practitioners where government doctors are

not available. On the two objections raised by Shri S. S. Mukherjee the demand cannot sustain. That apart I consider the present facilities as adequate and sufficient to meet requirements of the employees. I also find no justification for the demand that inspite of the NCDC having provided a full fledged hospital and a dispensary all employees and their families should be entitled to full reimbursement for the treatment received by them from private registered medical practitioners. The NCDC is under statutory obligation to maintain the hospital at a high cost. Here also no evidence is led to show the practice in other industrial establishments situate at Ranchi. Hence, the demand has no substance.

(iii) Item 14:

Under the rules applicable to the employees working in the offices of the Government of India an employee engaged to work on a Sunday or a holiday gets extra wages as per the scales provided in the rules. It is an admitted position that the employees of the Head Office of the NCDC at Ranchi are also being given the same facilities. The demand of the NCOEA is that the employees if called upon to duty on any Sunday they should be given (1) compensatory rest day and also (2) should be paid overtime wages at double the normal rate and if the employees are called to duty on any holiday they should be paid overtime wages at double the normal rate. The case of the NCDC is that the employees are being given the same facilities as are given to the Central Government employees in respect of their working on Sundays or holidays and that there is no justification or basis for the demand. The contention of the NCOEA is that the Corporation rules, which are same as Government of India rules, do not do justice and they should be paid overtime wages and be given compensatory rest days as is done for the employees working in mines under the Mines Act and in factories working under the Factories Act. At present overtime wages are paid at double the normal rate and a compensatory rest day is given in mines under the Mines Act. But under the Mines Act the workmen in mines are to work 48 hours a week or 9 hours a day at the maximum, whereas the employees at the Head Office are working 39 hours a week except in the week of second Saturday when it is 32½ hours. In mines under the awards there are 7 holidays in a year in addition to weekly rest days for daily rated and piece rated workmen and for monthly rated workmen the holidays are 16 days in addition to weekly rest days and half holidays on Saturdays. In the Head Office as per the Government rules 18 days are holidays in a year in addition to all Sundays and second Saturdays in each month. Hence, the employees of the Head Office cannot be equated with the employees in mines and they are enjoying more amenities which are not available to the employees of the mines. So is the case with the employees working in factories. No evidence is brought on record to show the amenities available in this respect in the offices of the other industrial undertakings. There is also no material to justify why the employees of the Head Office of the NCDC should be given more benefits than the employees working in the offices of the Government of India. There is oral evidence of WW.19 and WW.24 and their applications, Exts. W.211 and W.212, but no further information is furnished through them. The evidence of MW.5 and MW.27 creates a suspicion that the employees working in the rest houses and the hospital of the NCDC are not given compensatory holidays or overtime wages and their working hours are not properly regulated. The NCDC is bound to follow the government rules scrupulously and if there are any lapses they are bound to remove them. It is their duty to see that no employee of the Head Office, inclusive of the employees of the rest houses and hospital, is deprived of the benefits which are available to an employee in a similar position under the Government of India and also to see that his working hours also do not exceed the working hours fixed for a similar employee under the Government of

India. Wherever necessary arrangements can be made for working by shifts while strictly adhering to the number of working hours fixed by the Government of India.

(iv) Item 15:

This demand relates to the duty hours and overtime wages payable to the drivers. The case of the NCDC is that, as in the case of other employees of the Head Office the drivers also are governed by the practice adopted by the Government of India for the drivers employed in their offices. The Staff Car Rules of the NCDC are Ext. W.117 read with the office order, Ext. W.193. It is not in dispute that these rules are the same as the Government of India Staff Car Rules. Chapter V of the Government of India Staff Car Rules deal with the pay and allowances of the staff car drivers. As per rule 24 the chauffeurs of staff cars are to be treated as members of the regular establishment belonging to general central services, class III and they are entitled to dearness allowance and other allowances at the usual rates. Their working hours are governed by rule 25 and overtime allowance by rule 26. As regards the overtime allowance of the drivers of the NCDC the relevant office orders are Ext. W.192(3) read with Ext. W.192(2). They appear to me similar to rule 26 of the Government of India Staff Car Rules. The daily allowance and allowance for night haul of the NCDC drivers are governed by Ext. W.117 and Ext. W.192(1). The NCDC has conceded and they are bound, as held by me under Item 12, to follow the Government of India Rules and, as such if there are any discrepancies in their rules and the Government of India Rules, they are to be removed and anomalies, if any, be set right. Neither in the pleadings nor in the arguments any such discrepancy or anomaly is, however pointed out. The only argument of Shri Ranen Roy is that in view of the duties performed by them the drivers of the Head Office of the NCDC are not done justice in respect of payment to them of overtime wages or daily or night haul allowances. Again I have to say that no evidence is brought on record regarding the emoluments available to drivers in similar position in other industrial undertakings at Ranchi.

(v) Item 16:

The item relates to the demand of leave travel concession. At present the rules governing the leave travel concession of the employees of the NCDC are at pages 127 to 140 of the corporation rules, Ext. M.33. They apply to all monthly paid employees. These rules are on the lines applicable to the employees of the Government of India. According to the rules full reimbursement of the railway fare for the distance beyond 250 miles to the home town of the employees is granted once in two years. During pendency of the reference the recommendations of the Central Wage Board for the Coal Mining Industry have come and they are implemented by the NCDC with effect from 15th August, 1967. The Wage Board (Vol. 1 page 129) has recommended that the recommendations made by Shri S. Dasgupta as arbitrator in the colliery disputes are to be followed without the condition that all workmen to earn the return railway fare have to put in uninterrupted service of 3 months after their return from leave. The Wage Board also has recommended some modifications as regards the classes by which the workmen are entitled to travel. Under the corporation rules, Ext. M. 33, reimbursement is allowed only for the distance beyond 250 miles and it is allowed once in two years while under the wage board recommendations the reimbursement is allowed for the entire distance and it is allowed every year. Again, under the corporation rules, Ext. M. 33 the reimbursement is permissible not only for the employee but also for his family, whereas under the wage board recommendations it is available only for the employee. While dealing with the demands of the monthly paid employees of the NCDC for attendance bonus etc. the wage board (Vol. 1 Chapter. VIII page 81) has stated "we accordingly recommend that the monthly paid staff

of the NCDC who are at present governed by the Central Pay Commission's scales of pay, railway rules, corporation rules or any other rules should be allowed to opt for the scales of pay and other service conditions recommended by us for similar monthly rated staff in the private sector collieries. Such option shall be exercised within twelve months from the date our recommendations come into effect. It should however, be clearly understood that the option once exercised shall be final and binding." Pending the reference an arbitration award, of Shri O. Venkatachalam, Chief Labour Commissioner (Central) as arbitrator was made and it is published in the Gazette of India (annexure to Ext. M. 227). The award was between the management of the NCDC and the Colliery Mazdoor Sangh, Dhanbad and the M. P. Colliery Workers Federation, Chirimiri representing the employees of the NCDC. The dispute was as regards payment of train fare as per accepted recommendations of the wage board. The award was that the monthly rated employees in service of the NCDC prior to 15th August, 1967 (other than those governed by the railway rules or civil rules or officers) will be entitled to exercise option for the return railways fare concession admissible in terms of the recommendations of the Central Wage Board for the Coal Mining Industry and that the option once exercised shall be treated as final and binding on the employees. Accordingly the Additional Chief Personnel Officer, NCDC issued the circular, Ext. M. 227 dated 28th October, 1970 giving option to the monthly paid employees to exercise the option by 5th December, 1970. It is stated therein that if they fail to exercise the option it will be presumed that they have not exercised option and as regards them *status quo* would be maintained. It is not known how many of the employees have exercised the option. It is argued for the NCOEA that the award is not binding on the employees of the NCDC because NCOEA was not a party to the award. I do not see how the employees can deny the award when their unions were parties to it. Now the demand of the NCOEA is that all employees should be granted full reimbursement of leave travel concession once a year for the employee and his family. In other words, they want the best from the corporation rules and the recommendations of the wage board. No justifiable grounds are shown for the demand. No evidence also is led to show if such concessions are available to monthly paid employees of any other industry. It was pleaded that the employees of the State Bank, etc. are enjoying full reimbursement once a year. Neither the relevant rules of the State Bank are brought on record nor any other material to show the service conditions in the Bank. I find no basis for the demand.

(vi) Item 17:

The demand is that (1) for all class IV employees, security guards, drivers, machinemen, sweepers, packers and compositors, 4 sets of summer uniforms/liveries and one set of winter uniform should be provided (2) that the uniform should be supplied every year in time and that (3) washing allowance should be increased to Rs. 10 or 10 per cent of the salary. At present uniforms, summer and winter are provided by the NCDC as per schedules, Exts. W. 195 and W. 196 on the pattern given by the Government of India to their employees. It is contended on behalf of the NCOEA that the number of sets of uniforms given and the intervals at which they are given are not adequate. It is pointed out as an instance that for a driver only one winter set is provided, that a driver is expected to be tidy, clean and trim and that when only one uniform is provided it is not possible for him to get it washed and pressed during the entire period of summer. It is also contended that the compositors, packers and machine men should be provided at least with aprons to save their own clothing from getting soiled. W.Ws. 16, 19, 21, 24 and 25 are examined and they show their difficulties owing to lack of adequate supply and non-supply of uniforms. They also speak

that the washing allowance of Rs. 2 is not sufficient in view of the present day increase in the laundry charges. The case of the NCDC is that the NCDC has no responsibility to supply uniforms or leveries to the employees and it is not a condition of service. According to them they are giving uniforms to security guards class IV, staff car drivers class III, and sweepers class IV as per Ext. W. 195, 3 summer sets in two years and one winter set in 3 years, except to the cooks and bearers who are given 2 sets of summer uniform per year. It is also pointed out that the uniforms are given not to provide clothing to the employees but only with a view to make the above categories of employees distinguishable from others and to add a sort of dignity to the organisation. It is also argued that it is a part of duty for such employees to maintain the uniforms/leveries in proper order. I find no evidence to show if machinemen, packers and compositors are provided with uniforms or aprons, in the offices of the Government of India or anywhere else or more number of uniforms at shorter intervals are supplied. It is pointed out by the NCDC that a winter uniform supplied once in 3 years is not worn out as they are used only for a short period of winter each year and they are serviceable in the subsequent years and, as such there is no difficulty in getting them washed and pressed as pleaded by the NCOEA. On this material I find no case made out for the demand.

(vii) Item 19:

The wording of the item referred to is not clear. Perhaps the demand is two fold; firstly that all class IV employees of the NCDC at the Head Office at Ranchi should be either provided with rent free quarters or the actual rent paid by them for their residence should be reimbursed and secondly, that all class IV employees of the Head Office at Ranchi should be paid compensatory allowance. The defence of the NCDC is that they are paying house rent allowance according to the rules applicable to the class IV employees of the Government of India and that under the rules of the Government of India no compensatory allowance is payable to the employees at Ranchi. WWS. 16, 18, 19, 20, 21, 24 and 25 have spoken about the high cost of living at Ranchi. There is no material regarding the payment of house rent allowance or compensatory allowance in other industrial undertakings at Ranchi. To whomsoever quarters were not provided the NCDC was paying house rent allowance as per the Government of India rules, page 34, Ext. W.225. But as per the settlement, Ext. M229 it was increased to 12½ per cent of their basic pay upto the basic pay of Rs. 250 per month with effect from 1st May, 1970. Admittedly, this rate is far higher than the rate allowed to the employees of the Government of India. The NCDC was charging 5 per cent of the salary as rent if quarters were provided to an employee upto the salary of Rs. 150 per month, whereas as per Government of India rules 7½ per cent was chargeable. As per the circular, Ext. M226 it is reduced by the NCDC to Rs. 2 per quarter with effect from 1st October, 1969. Compensatory (City) Allowance as per Ext. W.225 is not payable for employees at Ranchi, inasmuch as Ranchi is not included in any of the classified cities. Because cost of living is rising at Ranchi from time to time cannot be a ground by itself for claiming compensatory allowance. The cost of living is rising in every place, whether big or small. In short, in terms of the settlement, Ext. M229, which is between the parties the demand by NCOEA for the house rent cannot sustain any more and there is no basis for claiming compensatory allowance. The item, therefore, has no substance.

In the result, I find no justification for any of the above seven demands. These employees are working on the same level as similar employees in the offices of the Government of India and no case is made out why these employees of the NCDC should be treated differently from the employees of the Government of India. Wherever the NCDC has made a departure and has provided more beneficial emoluments they are to continue in future.

10. Item No. 4:

"Whether the demand that all the workmen of the headquarters once at Ranchi should be supplied free electricity, free drinking water and free coal is justified? If so, to what relief are the workmen entitled?"

Item No. 5:

"Whether the demand that all the workmen of the headquarters once at Ranchi should be provided with free transport facilities from their respective colonies/residences to place of duty and back is justified? If so, to what relief are they entitled?"

These two items relate to the demand that all workmen of the headquarters office at Ranchi of the NCDC should be supplied electricity, drinking water, coal and transport facilities from their respective colonies or residence to the place of duty and back, free of cost. At present electricity is supplied free to the workmen in the collieries. It is supplied free only upto a certain limit. The workmen in the collieries are supplied free or cost drinking water and a certain quantity of coal. But they are not supplied with any transport facility. Some of the workmen working in the collieries, who are not provided with quarters are living in the nearby villages and the benefit of supply of free electricity, free drinking water and free coal is not available to them. The case of the NCOEA is that some of the employees of the headquarters office at Ranchi are provided with quarters in Gandhi Nagar colony and many of the employees are residing in scattered far off places in the town of Ranchi. WWS. 16 & 20 have spoken about the difficulties experienced by the employees in coming to their place of duty and returning home, particularly during night hours owing to lack of transport facilities. It is argued for the NCOEA that employees are transferable from the headquarters office at Ranchi to collieries and vice-versa and when an employee is transferred from a colliery to the headquarters office at Ranchi it virtually means punishment for him, because at Ranchi he has to spend out of his pay for electricity, drinking water and coal. It is contended on behalf of the NCDC that supply of free electricity, free drinking water, free coal or free transport are not conditions of service covered by Schedule III of the Industrial Disputes Act, 1947 and, as such the dispute regarding them could not be industrial dispute. It is also pointed out that free supply of electricity, drinking water and coal are fringe benefits made available to the employees working in collieries and who are deprived of town amenities and that the employees of the NCDC working in their offices at Calcutta, Delhi or Madhya Pradesh are not given any of these benefits. In respect of the workmen of the collieries the Central Wage Board for the Coal Mining Industry had recommended (Vol. I Page 149) free supply of coal, but the recommendation was not accepted by the Government (as can be seen from the Gazette dated 25th July, 1967, Resolution dated 21st July, 1967, Part I, Sec. I Extraordinary, page 149). Ext. M75 is the statement of demands dated 12th July, 1964 on behalf of the NCOEA and demand 27 was for waiver of water tax. Para 1(1) of the settlement, Ext. M2 was to the effect that the employees transferred to the region will be entitled to the same facilities as other employees in the region, viz. supply of coal, electricity and drinking water according to the practice and rules prevailing in these areas, as is being done at present. Shri S. S. Mukherjee has argued that it is not feasible to supply electricity, coal and water free of cost to the employees at Ranchi without putting the NCDC to additional financial burden. It is pointed out that at the headquarters only 8 annas per month is charged for electricity from every employee residing in the colony at Gandhi Nagar and it is not feasible to supply coal, as the nearest colliery from Ranchi is at a distance of 40 miles. On this material I consider that the fringe benefits available as per rules or practice to the workmen of collieries are confined only to the region and an employee cannot claim them as a condition of service when he is transferred to the headquarters or any other place. Admittedly, free supply of electricity, drinking water or coal

or transport is not a condition of service. In *Shalimar Paint Ltd. v Third Industrial Tribunal (1971-II-L.L.J 58)* the Calcutta High Court, following the principles laid down in an English case, held that employment commences when the employee reaches his place of duty which is "the base of operations" and that some of the employees may have to incur additional expenses by way of travelling as a result of employer's business or undertaking and it does not entitle the employee to make a claim for extra benefit or compensation. No evidence is brought forth to justify the demand. Hence, the demand cannot sustain.

11. Item No. 18:

"Whether the demand that all security guards residing in barracks should be exempted from payment of rent and charges for electricity and granted barrack allowance is justified? If so, to what relief are the workmen entitled?"

The demand of the NCOEA is that all security guards residing in barracks should be (1) exempted from payment of rent and electricity charges, and (2) should be granted barrack allowance. It is conceded by the NCOEA that at present the security guards are exempted from payment of rent for the barracks and thus, the demand now is limited to exemption from payment of electricity charges and for payment to the security guards the barrack allowance. On behalf of the NCDC, NW.6 has in his evidence that it is not compulsory for the security guards to live in the barracks and that the barracks are allotted on application. Shri Ranen Roy representing the NCOEA has conceded that if it is not compulsory for the security guards to live in the barracks and they are only to attend the fixed duty hours, the demand loses force. Hence, I find no substance in the demand.

12. Item No. 10:

"Whether the demand for the adoption of a Family Pension Scheme on a sliding scale for different categories of employees on the basis of their monthly salary payable in the event of the death of an employee, in service, to the dependants, subject to a minimum of Rs. 50 for the lowest category, with retrospective effect from the 1st January, 1984, is justified? If so, to what relief are the workmen entitled?"

As pointed out already under item 12, when the NCDC was formed with effect from 1st October, 1956 the employees taken over along with the State Collieries who were in service since prior to 1st June, 1944 were governed by the railway rules as they stood on 30th September, 1956, those appointed on or after 1st June, 1944 but prior to 1st October, 1956 by the civil rules as stood on 30th September, 1956 and those appointed by the NCDC on or after 1st October, 1956 by the corporation rules, Ext. M33. Amendments to the railway rules and civil rules subsequent to 1st October, 1956 were adopted by the NCDC after specific examination in each case where necessary and were made applicable respectively to the employees appointed prior and after 1st June, 1944 but before 1st October, 1956. Thus, the employees taken over by the NCDC on 1st October, 1956 are enjoying retirement benefits, inclusive of superannuation pension. But the employees appointed on or after 1st October, 1956 and governed by the corporation rules, Ext. M33 do not have the benefits of superannuation pension but they have the advantage of the Staff Provident Fund rules. The Staff Provident Fund Rules have been framed on the basis of the rules framed by the Sindri Fertilizer & Chemicals Ltd. But the rate of subscription payable by the NCDC has been adopted at 8 1/3 per cent of an employee's emoluments on the basis of the Government of India Contributory Provident Fund Rules, instead of 6 2/3 per cent as it is in the case of Sindri Fertilizer & Chemicals Ltd. In addition the employees of the NCDC appointed on or after 1st October, 1956 also have the benefits of the gratuity scheme, Ext. M232, which has also a provision for payment of gratuity in case of death of an employee by accident while on duty. The employees of the NCDC appointed prior to 1st October, 1956 had the

benefit of the Liberalised Pension Rules, 1957. Under these rules the employee had normally to complete service of not less than 20 years in order to become eligible for the benefit of the family pension and also the duration of the pension was limited to a maximum period of 10 years or 5 years after the date of superannuation whichever was earlier. Finding the Liberalised Pension Rules, 1957 as inadequate a fresh scheme, Family Pension Scheme for Central Government employees, 1964 was drawn and introduced with effect from 1st January, 1964. Under these rules a pension for life to the widow of the deceased employees is provided. Under this scheme the maximum pension available to the widow or children is Rs. 150 per month and the minimum is Rs. 25 per month. But the employee has to surrender a portion of gratuity, where admissible equal to his two months emoluments or pay, as the case may be, subject to a maximum of Rs. 3,600. The Government of India employees in service on 31st December, 1963 and who were governed by the Liberalised Pension Rules, 1957 wholly or partially had option to elect this scheme in substitution of the previous benefits. Thus, who were governed by the old pension rules in to were not entitled to the benefit of this scheme. The working of the item under reference is not quite clear and it shows that the demand is only for adoption of a family pension to the dependants in the event of the death of an employee while in service. Shri Ranen Roy has submitted that the demand virtually means that the family pension scheme for Central Government employees, 1964 should be extended to the employees appointed by the NCDC after 1st October, 1956 also. According to the item the minimum of the family pension demanded is Rs. 50, while under the scheme it is Rs. 25. Neither in the item under reference nor in the pleadings of the NCOEA, nor in the arguments of Shri Ranen Roy was there any suggestion that the employees, for whom extension of the family pension scheme is demanded were prepared to forego the contributory provident fund and gratuity schemes. The NCOEA had mentioned that certain public sectors also have already introduced the family pension scheme in respect of their employees. But no such scheme of any public sector undertaking was brought on record. Had they done so it would have been of persuasive value. Shri Ranen Roy has argued that the family pension to all industrial workers, particularly in the coal industry is an accepted principle from the security point of view and has referred me to the Pension Fund Act, 1952, Coal Mines Provident Fund Family Pension & Bonus Scheme Act, 1948 and the amending Act 60 of 1971 by which the Coal Mines Provident Fund Family Pension and Bonus Scheme is made applicable to the above two Acts. At the same time he has conceded that these acts do not apply to the workmen in the present case. Application of these acts is limited and the liability of the NCDC is also limited and there is no complaint that the liability is not being discharged. It is argued for the NCDC that the NCDC should not be burdened with additional liability in view of its financial position. The balance sheet of the NCDC for 1969-70, Ext. M234 does not show that the NCDC has made any profits. I do not find any basis to justify the demand. The demand is rejected.

13. Item No. 13:

"Whether the demand that joint seniority of all structural and civil draftsmen should be implemented immediately along with financial and other benefits with retrospective effect and payment of arrears should be made in terms of the tripartite agreement dated the 21st September, 1965 is justified? If so, to what relief are the workmen entitled?"

The demand arises out of the tripartite settlement, Ext. M2 dated 21st September, 1965 and it is for a joint seniority of structural and civil draftsmen. The position of draftsmen in the NCDC immediately before the settlement, Ext. M2 was this: There were and still are draftsmen of different categories. In the structural and civil sections with which we are concerned, there were tracers, junior draftsmen, senior draftsmen and

chief draftsmen. Tracers in structural and civil sections were in the same pay scale having a common seniority list. Similarly, junior draftsmen in both the sections were also having the same pay scale and a common seniority list. Promotion in the civil section was from tracer to junior draftsman, from junior draftsman to senior draftsman and from senior draftsman to the chief draftsman. Similarly, in the structural section also promotion was from tracer to junior draftsman, from junior draftsman to senior draftsman and from senior draftsman to chief draftsman. From chief draftsman of structural as well as of civil sections promotion was to Assistant Engineer, from assistant engineer to executive and from executive engineer to superintending engineer. It is stated that the above promotion channels are the same even now. Assistant engineers were having the same pay scale and a common seniority list. So also are executive engineers and superintending engineers. In short, at the time of the tripartite settlement, Ext. M2 only senior draftsmen and chief draftsmen were having different scales of pay and different seniority lists. The pay scale of the senior draftsman, structural was Rs. 335—425, while the senior draftsman, civil was Rs. 180—380. The pay scale of the chief draftsman, structural was Rs. 450—680, while of the chief draftsman, civil was Rs. 335—425. After several demands by the NCOEA there was the settlement, Ext. M2 between the NCDC and NCOEA before the Assistant Labour Commissioner (C) Hazaribagh and Labour Enforcement Officer, Ranchi during the conciliation proceeding. Terms 5 and 6 of the settlement are relevant for the item. As per term 5 it was agreed that the pay scale of the chief draftsman, civil and chief estimator would be revised from Rs. 335—425 to Rs. 350—20—450—25—575 and the pay scale of the senior estimator and senior draftsman from Rs. 180—380 to Rs. 250—10—290—15—425. It was also agreed in terms 6(1) "future appointments of the post of Chief structural draftsman will be in the scale as now being prescribed for the post of chief draftsman and chief estimator, viz. Rs. 350—575 in place of the present scale of pay of chief structural draftsman at Rs. 450—680". It means that the pay scale of chief draftsman of civil as well as of structural would be the same viz. Rs. 350—575. As per term 6(2) of the settlement it was also agreed that "a joint seniority roll be brought into effect in regard to structural and civil draftsmen of various categories". In the settlement, Ext. M2 there is no reference to the pay scale of senior draftsmen, structural and it means that his pay scale of Rs. 335—425 was to continue for them. Thus, the revised pay scale of the senior draftsman, civil and the pay scale of the senior draftsman, structural was the same at the maximum and the increments were also the same, but the starting of the scale for the senior draftsman, civil, however was Rs. 250 while of senior draftsman, structural Rs. 335 with a difference of Rs. 85. According to the NCOEA the revised pay scales as per the settlement are implemented, but their complaint is that a common seniority list in respect of chief draftsmen, structural and chief draftsmen, civil and a common seniority list in respect of senior draftsmen, structural and senior draftsmen, civil are not prepared and published. Thus, their demand is for preparation and publication of the common seniority lists. According to the NCDC there was no difficulty whatsoever in having a common seniority for chief draftsmen, structural and chief draftsmen, civil in respect of those recruited after the settlement, Ext. M2, as the new pay scales for both the posts are the same but the difficulty was as regards the existing incumbents as their pay scales were different. In the case of senior draftsman, structural and senior draftsmen, civil also the difficulty pleaded by the NCDC as regards joint seniority was that their pay scales were different. It is submitted that though the maximum of the pay scales was the same the starting was different and as such the seniority of the senior draftsmen, structural was to be adversely affected. As an illustration it is pointed out that a senior draftsman, civil starting on a pay of Rs. 250 in the pay scale of Rs. 250—425 in the 3rd year of his service could come to the pay of Rs. 280, whereas a senior draftsman, structural appointed in the pay scale of Rs. 335—425 could be drawing the pay of

Rs. 335 in the very first year of his service and, as such the pay scales could not be the relevant factor in determining the seniority and therefore a common seniority roll was impossible for senior draftsman, civil and senior draftsman, structural. The same reasons were given in the letter, Ext. M32 dated 17th February, 1967 addressed by the NCDC to the NCOEA. It is further argued that when by implementation of a settlement a third party was to be injured it was an undisclosed impediment and the settlement could not be implemented on the principle of S. 23 of the Contract Act. Pending the Reference an application was submitted on behalf of 2 chief and 3 senior structural draftsmen with the prayer to declare the demand in the item as unjustified and to implede them as party or to permit them to examine witnesses or to examine them as court witnesses so that all the facts and circumstances should be placed before the Tribunal. According to these applicants, as well as the NCDC the nature of work of chief and senior draftsman, civil and chief and senior draftsman, structural and qualifications required of them were different and distinct, that in view of this two posts of senior draftsman, structural with the pay of Rs. 335—425 which was equivalent to the pay scale of chief draftsman, civil and some posts of chief draftsman, structural with the pay scale of Rs. 450—680 were created in 1962-63 and that, as such the chief draftsman, structural could not be equated with the chief draftsman, civil and a common seniority list for them could not be prepared and for the same reason a common seniority list also could not be prepared for the senior draftsman, structural and senior draftsman, civil. The application was rejected by the Tribunal through its order dated 14th September, 1971, inasmuch as the same plea was being canvased by the NCDC on the same grounds. The NCOEA has flatly denied that the nature of work of a chief draftsman, structural and a chief draftsman, civil and of a senior draftsman, structural and a senior draftsman, civil was different or that the qualifications required of them were distinct. According to them a senior draftsman, civil could perform the duties of a senior draftsman, structural and a chief draftsman, civil of a chief draftsman, structural and on several occasions such duties were assigned. MW.15 is examined by the NCDC with a view, perhaps to support their case. But his evidence is in favour of the NCOEA. In the examination-in-chief itself he has deposed that a senior draftsman, civil cannot perform duties of a senior draftsman, structural, at the same time adding the qualification "ordinarily". The witness is a superintending engineer, civil. He has pointed out that S. K. Mitra and S. N. Dey, also intervenor applicants praying for impleading them as parties, were respectively chief structural draftsman and sole senior structural draftsman in his unit, that he does not know if a degree, diploma or certificate is issued by any recognised institution for structural draftsman and civil draftsmen separately, that sometimes a junior draftsman, civil does structural drawings also, that drawings of coal handling plants are structural drawings and not civil drawings, that he himself had entrusted the work of coal handling plant drawings to S. Bagal, a chief draftsman, civil, that generally a senior draftsman, civil cannot do the work of a structural draftsman but with training and experience he can do it, that he had not made any special arrangement for imparting training to junior draftsmen in the work of structural draftsmen and that during the course of work training is imparted to junior draftsmen and senior draftsmen in structural work. Ext. W.15 is an office order appointing Swapan Kumar Gupta a senior draftsman, civil of water supply section to work under the design engineer to do structural work. Ext. W. 234 is an application by S. K. Baluja a senior structural draftsman and one of the applicants who applied for impleading as parties. This application shows that S. K. Baluja was a senior draftsman, civil from 11th March, 1961 to 26th July, 1963 when he redesignated as a senior draftsman, structural with effect from 27th July, 1963, that at the time of fixation in the wage board scales he was given benefits of his service in the post of senior draftsman, structural only, that as both the posts are considered same and as both

posts have been given the same scale in the wage board and having same nature of duties, he claimed to take into account his total service in the post of senior draftsman, civil and senior draftsman, structural as one for the purpose of granting service increments. From this material the inference is irresistible that there was no appreciable difference between the work of a senior draftsman, civil and a senior draftsman, structural, that a senior draftsman, civil could perform the duties of a senior draftsman, structural with slight experience, that no different qualifications were required for the two categories of draftsmen and that as a matter of fact also duties of a junior draftsman, structural and a senior draftsman structural were entrusted to a junior draftsman, civil and a senior draftsman, civil, respectively. On behalf of the NCOEA it was contended that prior to 1962 there was no difference between the pay scales of senior draftsmen, civil and senior draftsmen, structural, that in the year 1962 as per the seniority list, Ext. W.188 the NCDC had made the distinction for the first time and that now they have divided the draftsmen into several categories as can be seen from pages 9 and 12 of the seniority list, Ext. M180 with the sole object of creating confusion. Whatever that might be we are now concerned with the implementation of the settlement, Ext. M2. The NCDC was bound by the settlement and to prepare a common seniority list for senior draftsmen of all categories and also a common seniority list for all chief draftsmen of all categories. It is only to be seen whether the preparation of such common seniority lists was impossible as pleaded by the NCDC. The reference is not to adjudicate whether the settlement was bad, it only relates to the justification of the demand for implementation of its terms. The settlement, Ext. M2 is arrived at by agreement between the parties in the course of conciliation proceedings, it is covered by S. 18 of the Industrial Disputes Act and it is binding on the parties under S. 19 of the Act. Under law if such a settlement is not implemented remedy is available under other provisions of the Act and in respect of the same dispute a reference cannot lie, as pointed out by the Supreme Court in Bangalore Woollen Mills (1968-1-L.L.J. 555). But the Ministry has chosen to make the reference. Perhaps the intention was to see if the settlement had become incapable of implementation, as in the case of a contract becoming incapable of performance. Thus, the onus was lying on the NCDC to prove that the settlement, Ext. M2 was impossible to be implemented by them. I have pointed out above that immediately before the settlement, Ext. M2 dated 21st September, 1965 the pay scale of tracers in the structural and civil sections was the same and they were having a common seniority list and, similarly the junior draftsmen in the two sections also were having a common pay scale and a common seniority list, that there were no special qualifications required for a senior or a chief draftsman, structural over and above the qualifications required for a senior or chief draftsman, civil, that the senior draftsmen, civil were being posted to perform the duties at times of senior draftsmen, structural, that chief draftsmen, civil as well as chief draftsmen, structural were eligible for promotion to assistant engineers and that assistant engineers also were having a common pay scale and a common seniority list. It is evident that in terms of the settlement, Ext. M2 the chief draftsmen, civil and chief draftsmen, structural (new incumbents) are in the same pay scale and the senior draftsmen, civil and senior draftsmen, structural are having the same maximum of the pay scale with the same annual increments but the senior draftsman, civil having a lower start in the scale of pay, the difference being of Rs. 85. It is also an admitted position that at present also, as a result of wage board recommendations, senior draftsmen, civil and structural are having a common pay scale. Now it is to be seen whether implementation of the settlement, Ext. M2 was impossible as contended by the NCDC. It must be remembered that parties entered into the settlement, Ext. M2 with eyes wide open and understanding the implications and consequences of the terms. The basis for counting seniority can be either length of service or actual pay drawn in the pay scale. It is submitted on behalf of the NCOEA that the seniority list could

be prepared keeping in view the length of service of senior draftsmen, civil and senior draftsmen, structural taken together or by increasing the starting pay in the pay scale of the senior draftsman, civil by Rs. 85 and applying the same pay scale for both the categories of the senior draftsmen. Even if the pay scale of the senior draftsmen, structural is made applicable to the senior draftsmen, civil, I do not consider that the financial implication would have been considerable for the NCDC, inasmuch as the number of draftsmen, civil does not appear to be big. In the matter of chief draftsmen, civil and chief draftsmen, structural also I do not see why a common seniority list could not be prepared. In terms of the settlement, Ext. M2 the pay scale of these categories of the draftsmen is the same except to the extent of the incumbents who were in the pay scale of Rs. 450—680. The incumbents then in the pay scale of Rs. 450—680 could be given protection of their pay beyond their pay of Rs. 575, the maximum of the new pay scale of Rs. 350—575 and brought in to the same seniority list. An instance for this procedure can be found in Ext. M179, which is an office order of the NCDC dated 10th June, 1969. Pages 7 and 8 of Ext. M179 show that after the wage board recommendations came the pay scales of senior draftsmen, civil and senior draftsmen, structural has been raised to Rs. 305—615 and of chief draftsmen to Rs. 405—730 and the old scale of pay of Rs. 450—680 is protected for S. K. Mitra and R. N. Sur. Similar protection could be given to the then incumbents, the chief draftsmen, structural in the pay scale of Rs. 450—680 and the settlement, Ext. M2 implemented. I also do not find any substance in the plea that some of the senior and chief draftsmen, structural had made complaint to the NCDC saying that their seniority would be adversely affected. They were also employees covered by the NCOEA and in an industrial dispute no individual employee could have any say except the association of the employees and an award or a settlement to which the association is a party is binding on all employees. Hence, I find no substance in the contention of the NCDC that the settlement, Ext. M2 had become impossible of implementation. I also do not find any justification for the NCDC in asking the NCOEA to forego the term of the settlement, which they had achieved after a long struggle instead of themselves bearing a little financial burden by amending the pay scale for the senior draftsmen, civil. While interpreting a settlement or agreement endeavour should be made to find validity in it unless it becomes impossible. As per term 6(vi) of the settlement, Ext. M2 the revised scales of pay were applicable from 1st April, 1965 and in fixation of pay in the new scales the employees had to be granted one increment for each completed period 3 years service subject to a maximum of 3 increments. Hence, my finding on the item is that a common seniority for senior draftsmen civil and senior draftsmen, structural on the basis of length of service of all senior draftsmen, civil and structural taken together or, if it is not feasible by applying the pay scale of senior draftsmen structural to the senior draftsmen civil and a common seniority for chief draftsmen, civil and chief draftsmen, structural having fixed their pay in accordance with para 6(vi) of the settlement Ext. M2 should be prepared and implemented by the NCDC with retrospective effect and the NCDC should pay arrears, if any, to the senior draftsmen.

14. Item No. 6:

“Whether the management was justified in drawing up a seniority list of Engineering Assistants which resulted in the supersession of Shri S. K. Dey? If not, to what relief is the workman entitled?”

The seniority list complained of is Ext. W.123. It is the seniority list of engineering assistants as in 1961. The name of S. K. De appears in the list at sl. no. 22. Agrieved by his seniority as shown in the list S. K. De and the NCOEA made representations and in reply to these representations the Chief of Administration of NCDC addressed a letter to the Ministry; with a copy to the Secretary, NCOEA on 16th January, 1967 and the

letter is Ext. W.223. It has two annexures, (1) extract from file No. 498/MD/Gaz of page 35/N and (2) extract of pages 174 to 175 of file No. 498/MD.Gaz/60. This second extract contains the principles on which the seniority list, Ext. W.123 is prepared. The NCOEA has not challenged the correctness of the principles enumerated in extract No. 2. Their only grievance is that the principles have not been applied properly to the case of S. K. De. From this extract it emerges that all the engineering assistants who have joined the corporation, S. K. De is one such engineering assistants, are diploma holders equivalent to degree holders, in order to treat them as degree holders they are presumed to have obtained the degree, 3 years subsequent to the year of their obtaining the diploma. For example, in the seniority list, Ext. W.123, sl. no. 1 Nagraj Rao and sl. no. 22, S. K. De have both obtained diplomas in 1950 and they are presumed to have obtained degree in 1953 as shown in column no. 4. Under column no. 5 the date of joining is mentioned and the date of joining of S. K. De is 28th March, 1960. So far there is no dispute. Column no. 4 refers to the year of allotment and for sl. no. 1 M. Nagraj Rao it is 1955 and for sl. no. 22, S. K. De it is 1957. This allotment year is of importance because the seniority of the engineering assistants (c) for promotion to the post of assistant engineers (C) counts from this year. This year of allotment is given in accordance with the principles laid down in principles nos. 2 to 7 in the extract no. 2. Principle No. 2 says that a person who joins the corporation within 3 years of obtaining his degree will have his year of allotment the year in which he passed his degree examination. As per principle No. 4 a person who joins the corporation more than 5 years but not more than 7 years after obtaining his degree has his year of allotment two years subsequent to the year in which he passed degree examination. S. K. De had passed his degree examination in 1953 as already pointed out and he had joined the corporation on 28th March 1960 and as such principle No. 4 applies to him and his allotment year should have been 1955. But these principles are subject to the general proviso that a person who has not held a post outside the corporation which is regarded as equivalent to that of an engineering assistant in the corporation will not be given the year of allotment more than 3 years prior to the year in which he is appointed as engineering assistant in the corporation and a person who has held a post outside the corporation which is regarded as equivalent to the engineering assistant in the corporation will be given credit for such experience upto a maximum of one year in addition to the credit that he is entitled to receive for his service below the rank of assistant engineer and his deemed year of allotment will accordingly not be more than 4 years prior to his year of appointment in the corporation. It appears that the NCDC treated S. K. De as having not held a post equivalent to that of an engineering assistant in the corporation before he joined the corporation and, as such gave him the year of allotment 1957 not more than 3 years prior to the year of his joining the corporation as engineering assistant. The contention of Shri Ranen Roy is that the post held by S. K. De before joining the corporation was equivalent to the engineering assistant in the corporation and it was just below the rank of assistant engineer and, as such he was entitled to the year of allotment 4 years prior to his year of appointment i.e. 1956, in the corporation. So, the crucial question is whether the post held by S. K. De before joining the corporation was equivalent or not to the post of engineering assistant in the corporation. It is not in dispute that prior to joining the NCDC S. K. De was an employee in the office of the Principle Works Officer, Public Works Department, Shan State, Taunggyi in the Union of Burma. He was released from that post on 31st October, 1959. As per the testimonial at page 8, Ext. W.129 he was Sub-assistant engineer, grade I under the Burma Government. As per page 13 of Ext. W.129 which is also a testimonial, on the date of his release he was in receipt of pay of Rs. 240 plus C.I.A. Rs. 100 per month. The pay scale of engineering assistant in the NCDC was Rs. 200—20—400 as per page 2 of Ext. W.123. Therefore, the contention of Shri

Ranen Roy is that the post of Sub-assistant engineer grade I held by S. K. De under the Government of Burma immediately before joining the NCDC as an engineering assistant was equivalent to the post of an engineering assistant of the corporation and as such he was entitled to be given the year of allotment 4 years prior to the year of his joining the corporation, i.e. 1956. Shri S. S. Mukherjee tried to meet the contention of Shri Ranen Roy in more than one ways. Ext. M71 is the application of S. K. De dated 7th September, 1959 sent through the proper channel from Burma to the NCDC. S. K. De had signed the application as sub-assistant engineer, grade I and his application was for appointment to "Engineering Assistant Service." According to Shri S. S. Mukherjee the service referred to was one which was subordinate to the assistant engineers in the NCDC. He also conceded that engineering assistant of the NCDC was one such posts covered by the "Engineering Assistant Service", but in the same breath he contended that the application of S. K. De was for appointment to the post of "overseer". For support he has referred to Ext. M70, which is an application of S. K. De sent for his appointment to the NCDC directly in which he had offered himself as a candidate "for the post of an overseer grade-I". Because he had applied "for the post of an Overseer Grade I" it does not follow automatically that the post held by him in Burma was not equivalent to the post of Engineering Assistant in the NCDC. The point for consideration is whether the post of "Sub Assistant Engineer Grade I" in Burma was equivalent to the post of Engineering Assistant in the NCDC. It is also not shown that in the NCDC or anywhere else the post of "Overseer Grade I" is lower than the post of Engineering Assistant or that it is the same as a simple overseer. If really he was holding an inferior post or if he had applied for an inferior post there is no material to show what consideration prevailed upon the NCDC in giving him the post of Engineering Assistant. Ext. M73 is the letter of appointment of S. K. De dated 25th March, 1960 and it does not show any such consideration. He had resumed duty on 28th March, 1960. In the seniority list Ext. W.123 the name of S. K. De occurs at sl. no. 22. Shri S. S. Mukherjee has argued that the two annexures said to be of Ext. W.223 are brought on record in violation of the order of the Tribunal, because both the extracts are notings from office files, that protesting against their admission the NCDC had filed an application on 8th February, 1971 and the NCOEA filed their counter to it on 9th February, 1971 and that an order in this regard has to be passed. It is true that by a previous order all the notings from office files were rejected to be summoned by one party from the other. But these two extracts are filed on behalf of the NCOEA. I also find that these two notings do not reveal any confidential matter or opinion. In this connection I may refer to Ext. W.129, page 2 which is an extract of file No. 5(2)a/498/MD/GAZ/60. It is under the signature of M. N. Das, Chief Engineer (Civil). This document is marked without the above objection. It is as regards the representation of S. K. De. The Chief Engineer (Civil) has stated at page 2 "he has been considered to have got his presumptive degree in 1953, but by virtue of his being appointed as engineering assistant in 1960, his year of allotment cannot go back beyond 1957 as nobody can be given more than 3 years' credit prior to the year in which he was appointed as an engineering assistant" and on this statement of the Chief Engineer (Civil) Shri S. S. Mukherjee has argued that the inference should be that the post held by S. K. De in Burma Government was not equivalent to the post of Engineering Assistant in the NCDC. The question is whether the post held by S. K. De under the Burma Government was a post equivalent to the post of Engineering Assistant in the NCDC and whether the year of allotment was given to him correctly. Because he was given the year of allotment as 1957 it cannot be presumed that the post held by him under the Burma Government was not equivalent to the post of Engineering Assistant in the NCDC. In this note it is stated at page 1 that the seniority of S. K. De has been assigned to him in accordance with the policy enunciated for such purpose. But it is not mentioned what the

policy enunciated was and for this the second extract of Ext. W.223 becomes relevant. Ext. W.223 is a letter from the NCDC to the Under Secretary to the Government also regarding fixation of seniority of S. K. De. In this letter also it was stated that the seniority of S. K. De was fixed on the basis of the principles laid down by the then Managing Director, R. C. Dutt, ICS. Thus, the principles governing the allotment of seniority to the engineering assistants become relevant. Shri S. S. Mukherjee could not point out any other document containing the principles according to which the allotment year was given to S. K. De and his seniority was fixed. In this view of the matter I consider that the two extracts are relevant and admissible. The objection of the NCDC is over ruled. The next argument of Shri S. S. Mukherjee is that the Departmental Promotion Committee meeting on 25th March, 1960 found that except Uday Shankar and P. K. Roy no other engineering assistant was suitable for promotion as Assistant Engineer. The relevant proceedings of the meeting are at pages 1 and 2 of Ext. W.122. Shri Mukherjee concedes that it is only a recommendation and the NCDC prepares the seniority list after accepting the recommendations, which they generally do. The argument is that S. K. De having joined as engineering assistant on 28th March, 1960 cannot question the decision of the Departmental Promotion Committee dated 25th March, 1960. But on that date S. K. De was no where in the picture and, admittedly, he resumed charge as an Engineering Assistant on 28th March, 1960. Ext. W.177 are the proceedings of the Departmental Promotion Committee held on 8th February, 1961 and on this occasion three persons were held as fit for promotion to the posts of Assistant Engineers, who are at sl. nos. 1, 2 and 3 in the seniority list, Ext. W.123. The argument is that the case of S. K. De could not be considered in the meeting as he had not completed one year's service in the NCDC by then and was not confirmed. But in the seniority list his name appears at sl. no. 22. I feel that the deliberations of the Departmental Promotion Committee are not relevant for the present purpose, because the complaint is not that S. K. De was not considered for promotion or promoted as Assistant Engineer. The complaint is that he is not given proper place in the seniority list of Engineering Assistants. The seniority list is different from the lists prepared by the Departmental Promotion Committee meetings from time to time holding who out of the seniority list are fit to be promoted as Assistant Engineers. On 8th February, 1961, if S. K. De was not a confirmed engineering assistant I fail to understand how his name could appear in the seniority list at all. I, therefore, find that prior to joining the NCDC S. K. De was holding a post equivalent to that of Engineering Assistant of the NCDC and that his year of allotment as per the rules of the NCDC ought to have been 1956. In the seniority list, Ext. W.123 his rank should be corrected accordingly and he should be given the consequential promotions and monetary benefits as per rules.

15. Item No. 7:

"Whether the seniority of Shri R. L. Thakur, Assistant Superintendent has been fixed as per rules? If not, to what relief is he entitled?"

This Item relates to the seniority of R. L. Thakur, Assistant Superintendent of the Accounts Department. The seniority list complained of is at page 2, Ext. W. 130. It is the provisional seniority list of Assistant Superintendents, Accounts department, NCDC as on 1st January, 1967. In the seniority list the name of R. L. Thakur occurs at serial no. 18. The contention of the NCOEA is that the seniority list was not prepared correctly, inasmuch as R. L. Thakur was senior to the Assistant Superintendents mentioned at serial nos 14 to 17. From page 20, Ext. W. 130 is the final gradation list of UDCs of C(A/Cs) as on 1st April, 1963.

When this final gradation list is compared with the provisional seniority list of Assistant Superintendents at page 2 the position is this:

Final gradation list of UDCs of 1963*	Seniority list of Assistant Supdts. of 1967
Sl. No. 36	Equivalent to sl. no. 18
,, 38	,, 14
,, 45	,, 15
,, 46	,, 16
,, 47	,, 17

The seniority list of Assistant Superintendents (page 2, Ext. W. 130) shows that all the 5 were promoted as Assistant Superintendents on one and the same day i.e. 1st July, 1966. Date of initial appointment of R. L. Thakur at serial no. 18 in the seniority list of Assistant Superintendents (page 2 of Ext. W. 130) is 28th June, 1957, while the dates of the other 4 are later dates. From the point of view of qualification R. L. Thakur at serial no. 18 is B. Com. so also serial Numbers 16 and 17 serial No. 14 Matric and only serial No. 15 is M.A.LL.B. a better qualification than R. L. Thakur. For these reasons it is contended or the NCOEA that the seniority list of the Assistant Superintendent, (page 2 of Ext. W. 130) was not correct and R. L. Thakur ought to have been above serial numbers 14 to 17. Learned Counsel for parties have referred at length to the previous facts stating that R. L. Thakur was a Lower Division Clerk in the office of the Deputy Superintendent of Collieries, Giridih in June, 1945, that in June, 1957 he was promoted as U.D.C. in the office of the Chief Accounts Officer at Calcutta and that he joined in the office as U.D.C. on 28th July, 1957. Sri Ranen Roy has argued that inspite of the order being dated 19th June, 1957 R. L. Thakur was released only on 27th June, 1957 and that, as such six other persons had joined as U.D.Cs between 25th June, 1957 and 27th June, 1957 making R. L. Thakur lower to them in the seniority. Shri S. S. Mukherjee has argued that the service under the colliery and the service under the Account Section belonged to two different cadres and the channel for promotion as U.D.C. in the Account Section was not from L.D.Cs from the colliery service, that in the seniority list of the U.D.Cs the name of R. L. Thakur could not be entered unless he was confirmed in the post after he passed the confirmatory examination and that after he passed the examination he was confirmed with effect from 1st July, 1961 as per Ext. W.58. He has also referred to the NCDC Manual, Ext. W.77 to show that passing of D.C.E. was necessary for confirmation. All these arguments appear to me as irrelevant in the light of the admitted facts that R. L. Thakur had joined as U.D.C. in the Chief Accounts Officer's Office on 28th July, 1957, that he was confirmed, after passing the confirmatory examination with effect from 1st July, 1961, that in the final gradation list of U.D.Cs of 1963, Page 20, Ext. W.130 his sl. no. was 36, that later he was promoted as a Senior Accounts Clerk and that with effect from 1st July, 1966 he was promoted as an Assistant Superintendent. The NCDC has not disputed the correctness of the final gradation list of U.D.Cs in the Accounts Section as on 1st April, 1963, Page 20 of Ext. W.130, as such the facts relating to the period prior to 1st April, 1963 have no relevancy. It is also admitted that the persons at sl. nos. 14, 15, 16 and 17 in the seniority list, Page 2 of Ext. W.130 also were promoted as Assistant Supdts. with effect from 1st July 1966 and that the date of initial appointment of R. L. Thakur at sl. no. 18 was 28th June, 1957 and the dates of the other four were later dates. No reasonable explanation has come forth as to why R. L. Thakur was placed at sl. no. 18 instead of above sl. no. 14. I find that R. L. Thakur was not given proper place in the seniority list, Page 2, Ext. W.130. He ought to have been given a place above the persons mentioned at Sl. nos. 14 to 17. I direct that the seniority list, Page 2, Ext. W.130 be amended by giving the place to R. L.

Thakur above the persons mentioned at Sl. Nos. 14 to 17 in it. He will be entitled to consequent promotions and monetary benefits as per the rules.

16. Item No. 8:

"Whether the promotions in the various grades of Ministerial staff made by the management with effect from the 1st July, 1966 which resulted in a number of supersessions were in order? If not, to what relief are the workmen, adversely affected, entitled?"

The wording of this item is not happy. After going through the pleadings of the parties I find that in substance the item calls for adjudication whether the alleged supersession of some employees by the NCDC was correctly made while promoting employees of various of ministerial staff with effect from 1st July, 1966. Admittedly, there was an agreement on 4th July 1966 between the NCDC and NCOEA agreeing to the principle that promotions will be made based on seniority and suitability of the employees. The case of the NCOEA is that the promotions ought to have been on the basis of seniority alone and the plea of fitness or merit raised by the NCDC was baseless. But for supporting this there is no material in the agreement dated 4th July, 1966 nor any other material is brought on record. The defence of the NCDC is that the question of promotion is the management affair. They further pleaded that the promotions in controversy were made in accordance with the decisions of the Departmental Promotion Committee. In para 109(1) of W/SA-(1) the NCOEA had alleged that the NCDC did not discharge their obligation of publishing the provisional lists of seniority, calling objections from the employees and then to prepare and publish the final seniority list in the light of the objections raised by the employees. The plea taken by the NCDC in para 87 of W/SM-(1) was contrary. The seniority lists in dispute are Ext. W.142 and Ext. W.130. There is no evidence to support the case of the NCOEA that proper procedure was not adopted in publishing the final seniority lists and in communicating them to the employees. According to para 109(2) of W/SA-(1) 8 employees were superseded. Shri Ranen Roy has conceded that the NCOEA has not led any evidence to prove supersessions of these workmen mentioned in clauses (b) to (g) in para 109(2) of W/SA-(1). But he has strongly pressed the cases of A. K. Roy and J. N. Kundu referred to respectively in clauses (a) and (h). Thus, the item referred to is reduced to consideration of supersession of only two employees, A. K. Roy, and J. N. Kundu.

According to the NCDC A. K. Roy was superseded as he was not found suitable by the departmental promotion committee on the basis of the adverse remarks in his confidential reports. A. K. Roy is examined as WW.22. He has deposed that at no time before the promotion had he received a copy of any adverse remarks from his confidential reports, that when he did not get promotion he had made a representation, Ext. W.21 and thereafter he had received a copy of the adverse remark, Ext. W.25 and that against Ext. W.25 he made a representation, Ext. W.23 to which no reply was received by him. But on actual verification the exhibits referred to by the witness did not appear to be correct. I find Ext. W.26 is a letter addressed by A. K. Roy to the Managing Director, NCDC praying that his case may be reviewed and he be promoted maintaining his position in the list of promotees as before. No date is mentioned on the letter, but it appears that the order of promotion was dated 23rd July, 1966. Ext. W.25 are the adverse entries made in the annual confidential report for the year 1965-66 of A. K. Roy communicated to the Dy. Superintendent of collieries, Gidi and Argada by the administrative officer. It is dated 18th July, 1966. Ext. W.24 is a letter to A. K. Roy from the Dy. Superintendent of collieries enclosing a copy of Ext. W.25 and this letter is dated 30th July, 1966. Ext. W.23 is reply to Ext. W.25 sent to the administrative officer by A. K. Roy protesting against the adverse remarks

and submitted his explanation. No date is mentioned on Ext. W.23. Ext. W.22 is a letter from A. K. Roy to the Managing Director and it is dated 10th August, 1966 in continuation to his representation and drawing the attention of the managing director to para 3 of the representation. Ext. W.21 is again a letter from A. K. Roy to the Chief of administration dated 12th September 1966 complaining that he had not received any reply to his representation dated 26th July, 1966 and Ext. W.22. From these letters it emerges that the adverse remarks were communicated to A. K. Roy after the order of promotion was passed and he was superseded and no reply to his representation against the adverse remarks was received by him. Admittedly, the order of promotions superseding A. K. Roy was passed on 23rd July, 1966 and the adverse remarks, Ext. W.25 were communicated to the Dy. Superintendent of collieries, Gidi and Argada on 18th July, 1966. This was before the order of promotions was made. Obviously, the adverse remarks in the confidential report must have been made much earlier to 18th July, 1966. The remarks in brief were that he was not punctual, was in the habit of extending leave after taking leave initially for a few days, went on leave frequently, never upto date in proper maintenance of prescribed registers, disposal of letters was lagging very much, not been regular in attending the office and not fit for promotion for another 5 years. It cannot be denied that the remarks were adverse and could prevail upon the departmental promotion committee in superseding him for promotion. Mere fact that the adverse remarks were not communicated to A. K. Roy and his protest or explanation was not considered before, the decision of the departmental promotion committee cannot be challenged. J. N. Kundu was the divisional accountant in the office of the chief engineer (civil) Ranchi. On 25th July, 1966 when promotions were made in accordance with the decision of the departmental promotion committee, J. N. Kundu was not promoted. On 27th July, 1966 he made a representation against his having been overlooked in the matter of promotion. To this representation or appeal the Dy. chief accounts officer, sent a reply, Ext. W.206 informing him that he was not found suitable for promotion to the post of assistant superintendent due to the following adverse remarks noticed in his confidential report for the year 1965-66—(1) Against "fitness for promotion to the next grade" the remark of the reporting and reviewing Officer was "not considered fit" (2) Against "general assessment of good and bad qualities" the remark was "he is good mannered but tries to avoid responsibilities". Against this letter, Ext. W. 206 J. N. Kundu sent a letter, Ext. W. 205 to the Deputy Chief accounts officer asking him to clarify if the decision communicated to him through Ext. W. 206 was with the approval of the Financial controller and also to inform him the date of the adverse remarks made by the reporting officer and also the date on which the remarks were reviewed by the reviewing officer in his confidential report. No reply was sent to this letter, Ext. W. 205. The confidential report is Ext. M. 68. It contains the above two remarks and nothing more in particular. The report shows that it was written by the executive engineer on 4th May, 1966 and it was reviewed by the reviewing officer under the date 25th September, 1966. The argument of the NCOEA was that the executive engineer, MW. 4 was bearing grudge against J. N. Kundu for act swearing an affidavit as desired by MW. 4 and that the confidential report was anti-dated. J. N. Kundu is examined as WW. 13 and while giving evidence he has introduced Ext. W. 206 and Ext. W. 205. Ext. W. 206 is a letter, as already stated, from the Dy. chief accounts officer and Ext. W. 205 is a copy of a letter from J. N. Kundu to the Dy. chief accounts officer. The contention of the NCDC is that on Ext. W. 206 the date originally was 25th September, 1966 and the figures 5 is rewritten as 3 so that the date may be read as 23rd September, 1966, and that it was done with a view to show that contents of the confidential report were sent to

J. N. Kundu before the report was actually reviewed by the reviewing officer on 25th September, 1966. It is further contended that Ext. W. 205 was introduced to further strengthen the above intention. It is a fact that the NCOEA did not call for original of Ext. W 205 and did not file the letter. Ext. W. 206 along with their other documents, although they had called for hundreds of documents from the NCDC. A look at the date on Ext. W. 206 supports the contention of the NCDC. The remarks in the confidential report were adverse to J. N. Kundu. The contention that the executive engineer, MW. 4 who had written the confidential report was bearing grudge against J. N. Kundu for not swearing an affidavit as desired by MW. 4 was not mentioned in the pleading. J. N. Kundu, WW. 13 had deposed that S. S. Rao, the executive engineer, MW. 4 had threatened him with dire consequences for his having not sworn the affidavit. There is no evidence to support the oral testimony of J. N. Kundu, WW. 13. As against the statement on oath of J. N. Kundu, WW. 13, the executive engineer, MW. 4 denied also on oath the allegation. As regards either A. K. Roy or J. N. Kundu there is neither allegation nor evidence that they were superseded by the NCDC actuated by malice or with *mala fide* intention amounting to unfair labour practice to victimise them. In Brook Bond (India) Private Ltd. v. their workmen (1963-1-L.L.J. 253) it is pointed out that promotions are to be governed by seniority and merit and should be left to the discretion of the management and where preference is based on malicious consideration amounting to unfair labour practice, the discretion may be interfered with. As a result of the above discussion I find that the supersession of A. K. Roy and J. N. Kundu was not unjustified and the item is answered in negative.

17. Item No. 17:

"Whether the management is justified in making the posts of Assistant Superintendents and Superintendents inter-changeable? If not, how should resultant vacancies of Assistant Superintendents be filled, the criteria to be followed in filling such vacancies and the financial benefit to be given?"

The item referred to can be better understood if we refer to the demand made by the NCOEA. As I have already pointed out, the items of the reference arose out of the charter of demands accompanying the strike notice, Ext. W.5 dated 17th April, 1967. The demand referring to the present item was Demand No. 5 and it was—

"The management have made the posts of assistant superintendents and superintendents inter-changeable and all the assistant superintendents are made to hold independent charges of section shouldering the duties and responsibilities of superintendents without any financial benefit. All these assistant superintendents be promoted to the posts of superintendents with retrospective effect from the date these posts were made inter-changeable. The resultant vacancies be filled by promotions of senior clerks and in case where assistant superintendents or senior clerks or head clerks are made to hold charges of any section without a superintendent, they should invariably be granted 20 per cent officiating allowance, provided they have not completed the length of 2 years in the grade and have not qualified for promotion to the posts of superintendents".

So, it emerges that a superintendent was incharge separately for each section previously, but the NCDC has issued some order or circular and in its implementation some assistant superintendents also were put in complete and independent charge of section but without giving the assistant superintendents the grade of superintendents and, as such the NCOEA made the demand for financial benefits to such assistant superintendents. As per the office order, Ext. M. 179 the

pay scale of a superintendent is Rs. 405—730 and that of an assistant superintendent Rs. 305—730. Ext. W. 80 is an office order dated 30th July, 1964. As per annexure A of the office order only in the Stores and Geology sections superintendents and assistant superintendents were working simultaneously in one and the same section and in the remaining sections either of them. MW.14, one of the superintendents, has in his evidence that out of the 5 sections related with him 3 were manned by the superintendents and two by the assistant superintendents. He further pointed out that according to the size, nature of duties and volume of work the sections were allotted between the superintendents and assistant superintendents. As an illustration he has pointed out that legal section was one which according to its size, responsibility and volume of work remaining the same was manned first by an assistant superintendent, then by a superintendent and again by an assistant superintendent. May be the sections were allotted to the superintendents and assistant superintendents taking into consideration the size, nature of duties and volume of work of the sections. But the responsibilities of the assistant superintendents and superintendents remained the same. Both the parties referred at length to the settlements, Exts. M2 and M3 and various office orders. But I consider them as not relevant for the item under reference. They relate to the number of posts of superintendents and assistant superintendents and promotions of the assistant superintendents as superintendents. Under item 12 I have already held that the NCDC is bound to give the same pay scales and allowances to its employees as is done by the Government of India to its employees. It follows that in the matter of officiating posts also they must follow the same principles and procedure. I could not understand why the NCDC could not put the superintendents incharge of two or more sections if they were small and give them assistance of assistant superintendents in managing them. But I find no justification when the NCDC chose to put an assistant superintendent in dependent charge of a section and extract from him the same nature of work and hold him responsible as a superintendent, why they should not pay him the officiating pay of the superintendent, as is done in the offices of the Government of India under the rules governing them. I do not find also justification for the demand of 20 per cent officiating allowance as is made by the NCOEA. The simple thing to do was that if an assistant superintendent was put in independent charge of a section he was paid the officiating pay of a superintendent as per the rules of the Government of India and if any senior clerk or a head clerk was made to work as an assistant superintendent he also was paid the officiating pay of the assistant superintendent. It goes without saying that if a post of a superintendent falls vacant an assistant superintendent should be promoted to it and if a post of assistant superintendent falls vacant a senior clerk or a head clerk should be promoted to it in accordance with the rules with the consequential financial benefits. Neither in the item under reference nor in the demand is a definite date mentioned since when the practice of extracting duties of higher post without paying higher pay was introduced. The charter of demands accompanied the strike notice, Ext. W.5 dated 17th April, 1967. Therefore, I hold that all such assistant superintendents who discharged the duties of superintendents on and from 17th April, 1967 are entitled to difference in their pay for the periods they discharged such duties as per rules. This is my finding under the item.

18. Item No. 2:

"Whether the action of the management in transferring Shri T. P. G. Pillai, senior estimator, from Gidi Washery of the National Coal Development Corporation Limited to Kathara Washery was justified? If not, to what relief is the workman entitled?"

This item relates to transfer of T. P. G. Pillai senior estimator Gidi washery to Kathara washery. He was transferred by the office order dated 7th June, 1968, Ext. W88 by the Secretary to the Board. It is stated

therein that T.P.G. Pillai, senior estimator, Gidi washery was thereby transferred along with his post to Kathara washery in his existing capacity with immediate effect. The superintendent engineer (civil) Gidi released T. P. G. Pillai from the Project on 11th June, 1966 (F. N.) as per Ext. W36. According to the NCDC T. P. G. Pillai was surplus to the requirement of superintending engineer (civil) Karanpura and as such he was transferred to Kathara washery in the same post without affecting his wages or conditions of service in any way. The NCDC has admitted that T. P. G. Pillai was a senior estimator at Gidi and that he was transferred along with post to Kathara washery. The NCDC has further pleaded that as he did not comply with the transfer order T. P. G. Pillai was proceeded against with a departmental enquiry and found guilty. But this proceeding following the transfer order is not relevant and it is only to be seen if his transfer order, Ext. W38 dated 7th June, 1966 was just and proper. According to the NCOEA the transfer order was not justified on two grounds viz.: (1) that it was against the settlement, Ext. W4 and (2) that there was no surplusage of the post of senior estimator at Gidi to warrant transfer of the post and T.P.G. Pillai to Kathara washery. Ext. W4 is a settlement dated 21st September, 1965 between the parties. Term No. 1 of the settlement is as following:—

"(1) Transfer of headquarters employees.—The question of transfer of headquarters employees was initially raised in connection with the de-centralisation of the accounts of the corporation. The association agreed that the transfers already effected in this respect will not be questioned. The association further agreed to the management's proposed transfer of the remaining accounts staff consequent on the de-centralisation of accounts to the areas concerned. The management further agrees that in order to avoid hardships to the employees the following will be taken into account before effecting transfers. Normally the category of employees mentioned against items (a) and (b) below will not be transferred:—

- (a) employees whose wives or husbands are employed in any of the NCDC establishment Ranchi or Central or State Government offices or Central Undertakings; and
- (b) office bearers of the association, during they held such offices."

The contention of the NCOEA is that T. P. G. Pillai was during the period Vice President of NCOEA, Gidi branch and as such his transfer was hit by term No. 1(b) of the settlement, Ext. W4 quoted above. It is also argued that the fact that T. P. G. Pillai was Vice President of NCOEA, Gidi Branch during the material period was not challenged by the NCDC though the NCDC had denied that NCOEA at Karanpura or at Gidi was recognised. According to the NCOEA the NCOEA as a whole was recognised and this fact is admitted by the NCDC. I do not find any substance in the argument of the NCOEA. From the settlement, Ext. W4 it is clear that term No. 1 related to transfer of headquarters employees and T. P. G. Pillai was not one of them. This inference is amply corroborated from the preamble portion of the term as well as clause (a) of the term. The heading of the term is "transfer of headquarters employees." Further the question of transfer related to the headquarters employees and it was initially raised in connection with the de-centralisation of the accounts of the corporation. Clause (a) of the term refers to the employees whose wives or husbands are employed in any of the NCDC establishments or Central or State Government offices or Central Undertakings at Ranchi. Thus, the term No. 1 of the settlement, Ext. W4 is limited to the transfer of employees from the Ranchi headquarters and does not extend to the employees of the NCDC serving elsewhere. The settlement has no term giving immunity to the employees of the NCDC in general from transfer if they happen to be office bearers of the NCOEA. Further, by the term No. 1 the NCDC has agreed only to take into account clauses (a) & (b) before effecting transfers and they did not agree that the office bearers of the association will not be transferred at all as a rule. Further, the agreement was that office bear-

ers of the association will not be transferred "normally". Hence, the first ground pleaded by the NCOEA has no force. According to the transfer order, Ext. W33, T. P. G. Pillai was senior estimator at Gidi washery. The argument on behalf of the NCOEA is that T. P. G. Pillai was attached to the office of the superintending engineer (civil) Karanpura circle at Gidi, that the superintending engineer (civil) was also the project officer for Gidi washery, that Gidi washery was included within Karanpura circle, that T. P. G. Pillai was senior estimator not for Gidi washery but for the entire Karanpura a circle and that the post of the senior estimator for the entire Karanpura circle was not surplus at the material period. In support of the argument I am referred to Ext. W86, whereby T. P. G. Pillai on 3rd July, 1963 was released by the administrative officer (civil) on transfer to the superintending engineer (civil) Gidi and also to the deposition of MW.3 Ext. W86 only shows that T. P. G. Pillai was transferred to Gidi in Karanpura Circle. MW.3 was superintending engineer (civil) from 1962 to 1969, except for a year he was at Gidi as superintending engineer and project officer of Gidi washery. It is his evidence that Gidi washery is in Karanpura circle and that the combined office of the superintending engineer and project officer was in Gidi washery. He has also deposed that during the material period T. P. G. Pillai was the senior estimator concerned with the whole circle of Karanpura. But, it is also in his evidence that T. P. G. Pillai was transferred along with his post of the senior estimator and that no other person was appointed in his place after his transfer. On the complaint of the NCOEA and on communication of the same by the Area general manager (k) Barkakana, the project officer, Gidi washery explained in reply, Ext. W35 that T. P. G. Pillai was transferred to Kathara washery since he was no more required in Gidi washery, as the civil work of the washery was nearing completion and that many more staff also would be released from the project. This is a document produced by the NCOEA and the NCOEA is bound by it. Shri Ranen Roy referred to the last page of Ext. M234, the annual report and accounts for 1969-70 of the NCDC. On this page there is a map and chart showing washeries and Gidi washery is shown therein, as under construction. But Kathara, Sawang washeries are also shown as under construction. He has also referred to Ext. W85, a letter from the superintending engineer (civil) A/Gidi to the Area general Manager (k), Barkakana dated 13th September, 1966. It is enclosed by a statement showing the existing strength of civil engineering officers/staff working in the area and further requirements/surplus from the area. It is pointed out that in the statement no post is shown as surplus, and it is argued that the statement contradicts Ext. W35 and deposition of MW.3. Ext. W85 or Ext. M.234 is not a conclusive proof that the post of senior estimator at Gidi washery in Karanpura circle was not surplus or that Ext. W35 and the evidence of MW.3 was wrong. The very admitted fact that the post of senior estimator was transferred to Kathara washery is sufficient proof that the post was surplus. This inference is fortified by the unrebutted evidence of MW.3 that after transfer of T. P. G. Pillai neither the post of senior estimator re-created nor any other person was appointed to the post. No malafides are attributed or proved against the NCDC in transferring T. P. G. Pillai. Even T. P. G. Pillai is not examined. I find force in the contention of Shri S. S. Mukherjee that transfer of an employee is a right of the employer and it cannot be questioned except on the ground of malafides. Moreover, at the time of his transfer T. P. G. Pillai was not an employee of the Head Office of the NCDC at Ranchi. Hence, I find that the action of the management in transferring T. P. G. Pillai senior estimator from Gidi washery of the NCDC to Kathara washery was not unjustified.

19. Item No. 3:

"Whether the demand for reinstatement of the following workmen with retrospective effect, is justified:—

- (i) Shri B. K. Singh, L. D. Clerk;
- (ii) S/ Shri Raghbir Singh, Rajendra Dubey and Rajendra Prasad, all watchmen;

- (iii) Shri Ram Rup Sharma, Conveyor Operator, Shri Shyam Narayan Singh, Mechanical Fitter (Helper);
- (iv) Shri S. S. Thakur, watch-cum-time keeper;
- (v) Shri M. Banerjee and others of Central Workshop, Barkakana.

If so, to what relief are they entitled?"

This item relates to the demand for re-instatement of workmen mentioned in sub-items (i) to (v). I propose to deal with them serially.

(i) *Shri B. K. Singh, L.D. Clerk.*

The affected workman B. K. Singh was removed from service under the office order, Ext. M. 10 dated 5th November, 1965 with immediate effect, stating that charges 1 & 2 mentioned in the charge-sheet dated 2nd September, 1965 were proved against him beyond reasonable doubt. The charge-sheet dated 2nd September, 1965 is Ext. M. 7. The explanation submitted by the affected workman to the charge-sheet is dated 23rd September, 1965 and it is Ext. M. 8. Ext. M. 9 is the report of the enquiry officer. The enquiry officer is examined as M.W. 6. It is an admitted position that through his letter, Ext. W. 96(1) dated 9th August, 1965 the affected workman applied for leave for 2 days i.e. on 9th and 10th August, 1965. Again he applied for one day more leave in continuation of his previous application on 11th August, 1965, Ext. W. 96(2). He did not report to duty on 12th or 13th August, 1965. 14th and 15th August, 1965 were closed days. On 16th August, 1965 he came to know that he was suspended with effect from 13th August, 1965. Ext. W. 96(4), a letter to the Chief of Administration & Revenue from the Controller of Stores & Manager under whom the affected workman was working, shows that the Controller of Stores had not recommended leave to the affected workman for 11th August, 1965 because no specific grounds had been indicated for the leave. Again the affected workmen appeared on 1st September, 1965 and submitted an application, Ext. W. 210 for subsistence allowance and also for information to him of the reasons for his suspension. The charge-sheet, Ext. M. 7 contained three charges, (i) that the affected workman absented himself unauthorisedly since 11th August, 1965, (ii) that he got himself admitted in Ranchi college on 11th August, 1965 for attending classes during office hours without taking permission of the competent authority and (iii) that although he had applied for leave for the 11th August, 1965, without indicating the purpose of leave, he was reported to have instigated and led the students of Ranchi college to an unlawful procession on that very day. In their written statement, W/SA-(i) paras 43 to 48 the NCOEA had pleaded that the affected workman had obtained permission for higher studies in 1964 and, as such the question of fresh permission did not arise, that the allegation of unauthorised absence of the affected workman was not true and he had submitted proper application, that the domestic enquiry held against him was irregular and improper and that he was victimised on account of his trade union activities, being at the relevant time an active member of the Central Executive Committee of NCOEA. In W/SM-(ii) paras 25 to 31 the NCDC had stated that the charge-sheet, Ext. M. 7 was issued to the affected workman late because he was in police custody, that he had applied for joining evening classes for the session during 1960-61 for Pre-University starting from 5.15 P.M. and that he had got himself again admitted in 1964 in day classes without obtaining any prior permission from the NCDC. In the rejoinder, W/SA-(ii) paras 32 to 38 the NCOEA denied that the affected workman was taken into custody by police and for that reason the charge-sheet, Ext. M. 7 could not be issued to him earlier. They have not rebutted the other facts pleaded by the NCDC in the written statement, W/SM (ii) paras 25 to 31 of the NCDC. Shri Ramen Roy led me through the enquiry proceedings Ext. M. 100 and pointed out the irregularities committed by the enquiry officer and contended that it was no enquiry at all in the eye of

law. Ext. M. 100 is examination of the affected workman by the enquiry officer. The enquiry officer, M. W 8 has admitted that Ext. M. 100 are the complete proceedings. No other witness was examined or document filed for the management in presence of the affected workman. The enquiry report, Ext. M. 9 also confirms the fact. Through his report, Ext. M. 9 the enquiry officer found the affected workman guilty under the first two charges and did not give any finding as regards the third charge. In view of the fact that there was no evidence of any kind before him, I am inclined to attach little importance to his report, Ext. M. 9 or his findings. I ignore the domestic enquiry altogether. Now, it is to be seen whether the charges contained in Ext. M. 7 are proved or not to any extent on the evidence led by the parties before the Tribunal. As I have already stated the charge-sheet, Ext. M. 7 contained 3 charges, unauthorised absence from 11th August, 1965, admission to the college on 11th August, 1965 for attending classes during office hours without obtaining previous permission and instigating and leading the student procession on 11th August, 1965. The charge-sheet also referred to the previous warnings administered to the affected workmen in writing for his dereliction of duty, lack of discipline and seeking admission to the college in 1964 and attending classes during office hours without prior permission. In the explanation, Ext. M. 8 the affected workman had admitted receipt of the warning although he stated that he was not allowed to refute the charges (whatever he may mean by that). He had admitted that he had applied for leave for 11th August, 1965 but was absent from 12th August, 1965 without any leave. It was denied in the pleading that the affected workman was arrested or was in police custody till 31st August, 1965. In the explanation, Ext. M. 8 the affected workman had denied that he got himself admitted into the college for attending classes during office hours or that he had led a student procession on 11th August, 1965. In the pleading these facts were not denied. The affected workman is examined as W.W. 14. His evidence is that 14th and 15th August, 1965, being holidays he went to the office on 16th August, 1965 and submitted an application for leave for 12th and 13th but the Superintendent refused to receive it saying that he was suspended from 13th August, 1965. He further deposed that he had submitted an application to the Chief of Administration on 1st September, 1965, Ext. W. 210 for suspension allowance. In this application it is categorically mentioned that he was placed under suspension as per the letter of Chief of Administration No. 51/DA/Cost/D. Eng/65/365 dated 13th August, 1965, but conspicuously enough there is no mention of his submitting application to the superintendent for leave on 12th and 13th August 1965. The affected workman, W.W. 14 has deposed that he had informed the NCOEA about the fact of his submitting application to the superintendent for leave for 12th August, 1965 and 13th August, 1965 and the superintendent having refused to receive it. But the pleading of NCOEA does not refer to it. There is no other witness or document to support the affected workman that he had submitted an application for leave for 12th August, 1965 and 13th August, 1965 or that it was refused by the superintendent. It is also in his evidence that he does not remember that if in 1960 he had sought permission to join evening commerce class in the college, that he joined the college in 1962, that he joined Degree I Course in 1963, that in 1964 he passed Degree I Course, that in 1964 he joined Degree II Course and passed in 1967 and that he was attending day classes in Degree Course from 9.20 A.M. to 3.30 P.M. It emerges that on and after 11th August, 1965 he was attending classes from 9.20 A.M. to 3.30 P.M. It was during office hours. It is immaterial if he got himself admitted on that day or previously, when it is established that he was attending classes on and after 11th August, 1965 during office hours without permission. It is also admitted by him that he was in service of the NCDC while he was attending Grade II classes. Shri

Ranen Roy has argued that under the Corporation Rules, Ext. M. 33 if the casual leave or earned leave could not be granted extraordinary leave ought to have been sanctioned and the management was not correct in refusing any kind of leave. But it applies to only for the leave applied for for 11th August, 1965 and for leave from 12th August, 1965 there was no application at all and as such the provision of Corporation Rules has no relevancy. He has also argued that the onus was lying on the NCDC to prove that the affected workman had got admission into the college for attending classes during office hours on 11th August, 1965. But in view of the admissions made by the affected workman, W.W. 14 himself, as pointed out by me above, I fail to accept his contention. Thus, on the evidence before this Tribunal charges 1 and 2 of the charge-sheet, Ext. M. 7 are proved against the affected workman beyond reasonable doubt and it was enough to justify his dismissal. Hence, I find that dismissal of B. K. Singh, Lower Division Clerk from service was justified and he is not entitled to reinstatement.

(ii) *S/Shri Raghbir Singh, Rajendra Dubey and Rajendra Prasad, all watchmen.*

Shri Ranen Roy has stated that he does not want to press their case. Hence, the claim for their reinstatement cannot sustain.

(iii) *Shri Ram Rup Sharma, Conveyor Operator, Shri Shyam Narayan Singh, Mechanical Fitter (Helper).*

The order dismissing them from service is Ext. M. 25 dated 24th August, 1966. It is issued by the manager and it states that the manager had obtained approval of the deputy superintendent of collieries & agent, Gidi A colliery for the same. The dismissal order shows that an illegal strike was organised from 8 A.M. on that day in the railway siding and coal handling plant section of the colliery; that the two affected workmen were the leaders of the workers, that the manager had issued a notice and appeal to the workers and explained the seriousness of the situation to the two affected workmen, that the two affected workmen continued to instigate the workers to continue the strike, that the above action of the two affected workmen constituted gross misconduct and that having satisfied himself that the two affected workmen were guilty of serious misconduct the manager had decided to dismiss them. The appeal referred to above is Ext. W. 106. Ext. M. 104 is the report of the manager submitted to the deputy superintendent of collieries & agent of the colliery recommending dismissal of the two affected workmen with immediate effect. The NCOEA denied the allegation that the two affected workmen had instigated the workers to continue the strike or that the strike was illegal. Admittedly, there was no charge-sheet issued to the affected workmen and no domestic enquiry held against them. The manager, M.W. 8 says that he held a spot enquiry, but on his own showing he did not record statement of any witness. Hence, it is to be seen (1) whether the acts attributed to the affected workmen constituted misconduct under the standing orders, Ext. W. 107 of Gidi A colliery justifying dismissal of the affected workmen and (2) whether the acts attributed to the affected workmen are proved. Ext. M. 106 is the decision of the Regional Labour Commissioner (Central) Dhanbad under sub-section (1A) of para 8 of the Coal Mines Bonus Scheme, 1948 declaring the strike at the colliery from 8 A.M. on 24th August, 1966 to 12-30 P.M. on 25th August, 1966 as illegal. Shri Ranen Roy has argued that there was no evidence brought before the Tribunal to show that the alleged strike was illegal as stated in Ext. M. 106. Before the Regional Labour Commissioner (Central), Dhanbad the case leading to Ext. M. 106 was contested by the NCOEA on behalf of the workmen against the NCDC. Para 8(4) of the Bonus Scheme lays down that the decision of the Regional Labour Commissioner regarding a strike is final subject to appeal. There is no material to show

that Ext. M. 106 was challenged or appealed against. It appears that the trouble was on account of alleged insult by the under manager, Ram Lal, M.W. 2 to a workman by name Paltu. It is in the evidence of M.W. 2 that the colliery manager had issued a personal appeals to each of the two affected workmen and he has proved them, Ext. M. 94 and M. 95. The colliery manager is examined as M.W. 8. He deposed that the two affected workmen were leading the strikers. His evidence is that he appealed to both of them to allow the workmen to resume their duties and that he appealed to the workers in general, Ext. W. 106 and had sent copies of it under covering letters, Ext. M. 94 and M. 95, to the two affected workmen. In the cross-examination he has repeated that the two affected workmen were leading the striking workers, that they acted as spokesmen of the workers and that they were inciting the workers. He has also deposed that they were saying "PAHALA ISKA FAISLA HO JAYAGA TO HAMLOG KAM PAR JAYANGA ICH BISCHMAY KOYI KAM PAR JAYAGA TO USKO BURA NATIJA BHOGNA HOGA". In rebuttal Shyam Narayan Singh is examined as W.W. 1. He has denied that he or Ram Rup Sharma had joined the strike at all. I find his evidence not reliable. According to clause 18(q) of the standing orders, Ext. W. 107 participation in illegal strike is a misconduct for which a workman can be dismissed. Thus, the argument of Shri Ranen Roy cannot sustain. Again he contended that there was no notification declaring coal industry as a public utility service and the notification being in force on 24th August, 1966. Shri S. S. Mukherjee has pointed out that as per S.O. 1915 dated 20th June, 1966, Gazette of India; Part II, Sec. 3(2) dated 25th June, 1966, page 1856 coal industry is declared to be public utility service for six months from 8th July, 1966. Thus, this contention of Shri Ranen Roy also has no force. Shri Ranen Roy has also submitted that participation in an illegal strike was no misconduct and for support he has relied upon two decisions of the Supreme Court. In Punjab National Bank Ltd. v. A.I.P.N.B. Employees Federation (A.I.R. 1960 S.C. 160) it is held that a peaceful pen down or stay-in-strike falls within the definition of 'strike' in S 2(q) of the Industrial Disputes Act. and mere participation in such a peaceful strike also becomes illegal, but would not deprive striking workmen from claiming the relief or re-instatement. In India General Navigation and Railway Co. Ltd. v. their workmen (A.I.R. 1960 S.C. 219) it is held that a clear distinction has to be made between those workmen participating in an illegal strike and those who join in an illegal strike and also take part in obstructing the loyal workmen from carrying on their work, in the matter of punishment to be meted out to them. I do not consider that these decisions support the case of the NCOEA. In the present case the two affected workmen not only participated in an illegal strike but also took leading part in preventing other workmen from joining their duties. On behalf of the NCDC Shri S. S. Mukherjee has further submitted that the two affected workmen were employees of Gidi A colliery having its own standing orders and not employees of the Head Office at Ranchi of the NCDC nor did they belong to the Head Office cadre and, as such their case cannot be considered by the Tribunal. He relied upon Ext. W. 107, the standing orders of Gidi A colliery and contended that the definition of "employee" in the standing order takes him out of the corporation rules. Ext. M. 33. I find substance in the argument. As a result of above discussion I find that the dismissal of the two affected workmen was not unjustified and, as such their reinstatement cannot be demanded.

(iv) *Shri S. S. Thakur, Watchman-cum-Time Keeper.*

Shri Ranen Roy did not press this case. Consequently, I find that the dismissal of S. S. Thakur was justified and does not call for consideration of his reinstatement.

(v) *Shri Banerjee and others of Central Workshop, Barkakana.*

This sub-item is not definite in indicating how many other workmen of the workshop, Barkakana along with Banerjee are claiming reinstatement with relief. From the pleadings it appears that 10 workmen were dismissed from service from 19th January, 1966 after a departmental enquiry for the alleged offence of abusing and assaulting the medical officer on 1st October, 1965 and the workmen are M. Banerjee, Jagdish Singh, Kaleshwar Pandey, Lala Sheo Shankar Prasad, Sulem Ansari, Baksu, Ram Prasad Sau, Mahabir Ram, N. S. Lakra and Hari Nath. The NCDC has raised a legal objection in respect of this sub-item contending that the Central Government was not the "appropriate government" under S. 2(a)(i) of the Industrial Disputes Act to make a reference in respect of the dispute. The argument is that the workshop is neither a "industry carries on by or under the authority of the Central Government" nor a "mine" and as such an industrial dispute relating to the workshop could fall within the sphere of the State Government of Bihar as per S.2(a)(ii). It is also argued that the workmen of the workshop not being employees of the head office of the NCDC at Ranchi, the tribunal cannot extend its jurisdiction to adjudicate the dispute. The pleading of the NCOEA is that the Central workshop at Barkakana is under the control of the NCDC, that the Chief Engineer (E&M) with office at Ranchi is the disciplinary and appointing authority and that as such the tribunal has jurisdiction to entertain the reference in respect of this sub-item. It is also stated that the workshop is a "mine" within the definition provided in the Industrial Disputes Act. The reference in respect of this sub-item, the competency of which is challenged by the NCDC is under S. 10 of the Industrial Disputes Act and under the section the reference can be made by the "appropriate government". The term "appropriate government" is defined in S. 2(a)(i) as "in relation to any industrial dispute concerning an industry carried on or by under the authority of the Central Government or.....a mine....." and under S. 2(a)(ii) in relation to any other industrial dispute the State Government. I have already held earlier that the Head Office of the NCDC is not an "industry carried on by or under the authority of the Central Government" and also it is not a "mine". The argument of Shri Ranen Roy is that the Central Workshop at Barkakana is a mine. The term "mine" is defined in S.2(1b) of the Industrial Disputes Act, as meaning a mine as defined in clause (j) of sub-section (1) of Sec. 2 of the Mines Act, 1952. According to S.2(i)(j)(vii) "all workshops situate within the precincts of a mine under the same management and used solely for purposes connected with that mine or a number of mines under the same management" are included within the meaning of a "mine". The submission of Shri Ranen Roy is that onus was lying on the NCDC to prove that the Barkakana workshop was not within the "precincts of a mine", that the NCDC did not lead any evidence to prove the same and that, as such the workshop should be presumed to be within the "precincts of a mine". It is true that the NCDC did not lead any evidence as contended by Shri Ranen Roy. But there is also no evidence on behalf of the NCOEA in support of their argument. It is not even suggested that there is any mine hereby the workshop. W.W. 2 says that there is no colliery as Barkakana colliery. That apart, as per the definition the workshop should be under the same management as the mine and it should be used solely for the purposes connected with that mine or a number of mines which are under the same management. It is argued for the NCOEA that the Barkakana workshop as well as their other mines are under control of the NCDC and the workshop is used for manufacturing implements required for the mines of the NCDC. Management is different from control. NCDC may be the owner of the workshop as of several mines and other workshops but it cannot be said that the NCDC is in direct management of the workshop. For each colliery and each workshop there is a separate

manager in whom management of that colliery or workshop vests. M.W. 12 is the works manager, of the workshop, Barkakana since February, 1960. His evidence is that the workshop undertakes jobs of the NCDC and other departments of Government and semi-government and private concerns, such as, National Mineral Development Corporation, Hindusthan Steel, Bokaro Steel, Bihar State Electricity Board, Heavy Engineering Corporation etc. He further states in the cross-examination that while he was in charge of manufacturing division, castings were manufactured for M/s. India Firebricks and some spare parts for Bihar State Electricity Board. He further deposes that the castings were of some parts of the machinery that the order came through his superintendent and that they were done on charges. This evidence is corroborated by W.W. 4 who also admits that in the workshop machines of Hindusthan Steel Ltd. and Heavy Engineering Corporation are also received and repaired. Therefore, it follows that the workshop is not used solely for a mine or mines under the same management. W.W. 2 has conceded that all the machines of the different collieries of the NCDC are repaired in the workshop. Shri Ranen Roy has argued that production by the workshop of small articles at times for other industrial concerns should be considered as an exception and that the word "solely" occurring in the definition should be understood or equated with the word "mainly". I find it difficult to understand the word "solely" as "mainly". It is admitted that the Barkakana Workshop has been registered under the State Factories Act as can be seen from para 67 of W/SA. It is pointed out on behalf of the NCDC that S. S. Thakur and S. N. Verma, another workman of the same workshop were dismissed from service on the ground that they had assaulted an assistant engineer and the dispute about dismissal of S. N. Verma was referred by the State Government of Bihar under S. 10 of the Industrial Disputes Act to the State Industrial Tribunal. The Award of the State Industrial Tribunal is Ext. M 121. Parties to the dispute were the National Coal Development Corporation Ltd., Central Workshop, Barkakana, Hazaribagh and their workmen represented by Central Workshop & Store Workers Union Barkakana, Hazaribagh. On behalf of the NCDC the Award, Ext. M 121 and the fact of the workshop having been registered under the State Factories Act are relied upon for further force for the contention that in respect of an industrial dispute as regards employees of the workshop the State Government is the "appropriate government" and not the Central Government. The argument of Shri Ranen Roy is that in the award parties were different from those in the present case and as such it is not binding. The workmen of the central workshop, Barkakana were parties to the award and I am not convinced how they could escape from S. 18(3) of the Industrial Disputes Act. Shri Ranen Roy also referred me to the Central Wage Board for the Coal Mining Industry to show that the Central Workshop at Barkakana and Korba belonged to the NCDC and that the NCDC is wholly owned Government of India undertaking. But I do not consider it relevant for the present purpose. I have already held that in view of the wording of the reference this tribunal has limited jurisdiction and it cannot be extended to the workmen who are not employees of the Head office of NCDC at Ranchi. In the result I find that the legal objection raised by the NCDC should prevail. I, therefore, hold that the Central Government was not competent to refer for adjudication the industrial dispute involved in the sub-item regarding re-instatement and relief of M. Banerjee and 9 other workmen of the Central Workshop Barkakana.

The Award is made and submitted under S. 15 of the Industrial Disputes Act, 1947.

Sd/- N. VENKATA RAO,
Presiding Officer,
Central Government Industrial Tribunal,
(No. 2) Dhanbad.
[No. 1/22/67-LR II.]

S.O. 931.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta, in the industrial dispute between the employers in relation to the management of Kunustoria Colliery of Messrs Bengal Coal Company Limited, Post Office Toposi, District Burdwan and their workmen, which was received by the Central Government on the 21st March, 1972.

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL AT CALCUTTA**

REFERENCE NO. 27 OF 1971

PARTIES:

Employers in relation to the management of Kunustoria Colliery, Messrs Bengal Coal Company Limited.

AND

Their Workmen.

PRESENT:

Sri S. N. Bagchi, Presiding Officer.

APPEARANCE:

On behalf of Employers—Sri B. N. Lala, Personnel Officer, Bengal Coal Co., Ltd.

On behalf of Workmen—Sri S. N. Jha, General Secy., Colliery Mazdoor Congress.

STATE: West Bengal

INDUSTRY: Coal Mines

AWARD

The Government of India, in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), referred an industrial dispute existing between the employers in relation to the management of Kunustoria Colliery, Messrs Bengal Coal Company Limited, Post Office Toposi, District Burdwan and their workmen, to this Tribunal for adjudication, vide Order No. 6/61/70-LR, II, dated 4th February, 1971. The matters in dispute are referred in the Schedule to the Reference which reads as follows:—

"Whether the action of the management of Kunustoria Colliery of Messrs Bengal Coal Company Limited, Post Office Toposi, District Burdwan in discharging from service Shri L. B. Mukherjee Electrician with effect from 21st August, 1968 was justified? If not to what relief is the workmen concerned entitled?".

2. In this adjudication proceeding the management and the workmen through the General Secretary of the Colliery Mazdoor Congress have entered into a compromise relating to the matters in dispute referred to for adjudication by this Tribunal in regard to the discharge of the workman L. B. Mukherjee, Electrician. For the management the authorised Personnel Officer Sri B. N. Lala and for the Colliery Mazdoor Congress its General Secretary have signed the Memorandum of agreement and are present to-day for recording the compromise in relation to the matters in dispute referred to for adjudication by this Tribunal.

3. I have considered the clauses in the Memorandum of the agreement entered into by the parties and find them fair, just and equitable since those resolve all the matters in dispute and satisfy even the monetary claim available to the workman concerned. Accordingly, the compromise be and is hereby recorded and

an award be rendered in terms of the compromise petition which shall form part of the award.

This is my award.

(Sd.) S. N. BAGCHI,
Presiding Officer.

Dated

16th March, 1972.

**BEFORE THE PRESIDING OFFICER CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL
CALCUTTA**

REFERENCE NO. 27 OF 1971.

PARTIES:

Employers in relation to the management of Kunustoria Colliery of M/s. Bengal Coal Co., Ltd.

AND

Their workmen represented by the Colliery Mazdoor Congress.

In the matter of the discharge of Shri L. B. Mukherjee.

Joint Petition of Compromise:

The parties aforesaid most respectfully beg to submit as under:—

(1) That the dispute relating to the discharge of Shri L.B. Mukherjee, Electrician of the Kunustoria Colliery was referred to this Tribunal for adjudication vide Ministry of Labour Employment and Rehabilitation (Dept. of Labour and Employment) Notification No. 6/61/70-LR-II dated 4th February, 1971.

(2) That the parties to the dispute have submitted before the Tribunal, their respective written statements.

(3) That the Tribunal fixed the hearing of the case on 16th March, 1972 at 10-30 a.m.

(4) That the parties aforesaid, in the meantime, have, without prejudice to their respective averments in their written statements have settled the dispute described in the order of reference on terms herein-after stated:—

- (a) The management shall in full and final settlement of all the claims of Shri L. B. Mukherjee, the workman concerned, against the management pay to him the sum of Rs. 2000/- (Rupees two thousand only).
- (b) Shri L. B. Mukherjee the workman herein-concerned shall stand discharged from service on medical grounds with effect from 21st August, 1968.
- (c) The workmen shall not claim from the management either reinstatement or any other relief for Shri L. B. Mukherjee, the workman concerned.
- (d) The dispute between the parties stands fully resolved by this settlement and no further dispute relating to the present reference subsists hereafter.
- (e) That the said payment of Rs. 2000/- (Rupees two thousand only) shall be made by the management within 15 days from the date on which the award in terms of this settlement is published.
- (f) The parties shall bear their own costs of these proceedings.

(5) The parties pray that the Hon'ble Tribunal may be graciously pleased to accept this settlement and to give its Award in terms thereof.

For the Employees:

(Sd.) S. N. JHA, General Secy.
Colliery Mazdoor Congress.

(Sd.) B. N. LALA,

Personal Officer, Bengal Coal Co., Ltd.

Dated, 10th March, 1972.

[No. 6/61/70-LRII.]

S.O. 932.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta, in the industrial dispute between the employers in relation to the management of Barmondia 3/4 Pits Colliery of Bengal Coal Company Limited (New Beerbhoom Coal Company Limited, Post Office Dishergarh, District Burdwan) and their workmen, which was received by the Central Government on the 17th March, 1972.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA.

REFERENCE NO. 54 of 1971

PARTIES:

Employers in relation to the management of Barmondia 3/4 Pits Colliery of Messrs Bengal Coal Company Limited (New Beerbhoom Coal Company Limited), P.O. Dishergarh, Dist. Burdwan.

AND

Their Workmen.

PRESENT:

Sri S. N. Bagchi, Presiding Officer.

APPEARANCES:

On behalf of Employers. Sri D. Narsingh, Advocate

On behalf of Workmen. Absent.

STATE: West Bengal

INDUSTRY: Coal Mines

AWARD

In this reference Sri D. Narsingh, learned Advocate for the management submits that the Reference as originally made and thereafter amended suffers from inherent illegality in it and this Tribunal can only declare that there is no properly constituted reference over which this Tribunal can adjudicate and pass an award on the dispute under reference.

The resume of the facts is this: By Order No. L-1912(16)/71-LR.II dated April 6, 1971, the Central Government expressed its opinion that an industrial dispute existed between the employers in relation to the management of Barmondia 3/4 Pits Colliery of Messrs Bengal Coal Co. Ltd., P.O. Dishergarh Dist. Burdwan, and its workmen, in relation to the matters specified in the schedule annexed to the order of reference. The Central Government considered it desirable to refer the said dispute for adjudication and referred the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act to this Tribunal for adjudication. The Schedule annexed to the order of Reference reads as follows:

"Whether the management of Barmondia 3/4 Pits Colliery of Messrs Bengal Coal Company Limited (New Beerbhoom Coal Company Limited as amended by Order No. L/1912/16/71-LR.II, dated 9th August, 1971), Post Office Dishergarh, District Burdwan was justified in

reducing the piece-rate of the piece-rated trammers *viz.*, Sarvashri Khanda Munchi, Gour Bouri, Rampada Muchi, Parameshwar Mahato, Upendra Kora, Sukha Bouri, Mongal Munchi, Bara Akutia, Sona Muchi and Khubial from Rs. 0.64 paise to Rs. 0.45 paise per tub. If not, to what relief the concerned piece-rated trammers of the colliery are entitled?"

3. On receipt of this Reference on 16th April, 1971 notices issued, upon registering the reference to the parties, on 16th April, 1971, i.e. to Superintendent Personnel, Messrs Bengal Coal Co., Limited P.O. Dishergarh, Burdwan representing the management of the Colliery and to the Joint Secretary, Colliery Mazdoor Congress (HMS), Md. Hussain Street, Bengal Hotel, P.O. Assansol, Dist. Burdwan, representing the workmen. On 14th May, 1971 New Beerbhoom Coal Company through their attorney asked for time to file written statement. Time was granted upto 31st May, 1971. On 2nd June, 1971 for and on behalf of Messrs New Beerbhoom Coal Company Limited its attorney filed a written statement dated 26th May, 1971. On 2nd June, 1971 the Bengal Coal Company Limited by their attorney filed the other written statement dated 26th May, 1971. The workmen, represented by the Colliery Mazdoor Congress (HMS) filed through the Joint Secretary of the Union on 24th July, 1971 a written statement dated 20th July, 1971.

4. Thereafter, on 9th August, 1971 a corrigendum as follows:—

"S.O. .—In the Order of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) No. S.O. 2342, dated the 6th April, 1971, published in the Gazette of India, Part-II, Section 3, Sub-section (ii) dated the 19th June, 1971, at page 3364—

- (i) in the preamble, in paragraph I, for "Bengal" read "New Beerbhoom";
- (ii) in the Schedule, for "Bengal" read "New Beerbhoom".

Sd./-

was issued by the Ministry of Labour and Rehabilitation to the S.O. No. 2342, dated 6th April, 1971 to be published in the Gazette of India, Part-II, Section 3, Sub-section (ii) which relates to the original order of reference dated 6th April, 1971 as received by this Tribunal and in which the New Beerbhoom Coal Company Limited and Bengal Coal Company Limited submitted their respective statement as well as the workmen. By the corrigendum the management party of Barmondia 3/4 Pits colliery was submitted by New Beerbhoom Coal Company Limited, in place of the management party Bengal Coal Company Limited, as set forth in the original reference. The New Beerbhoom Coal Company Limited in paragraph 5 of its written statement stated *inter-alia*, quoting the order of reference and the subject matter of the dispute referred to for adjudication, that the reference had been made in relation to a dispute, alleged to be existing between the management of Barmondia 3/4 Pits Colliery wrongly stated to be owned by Messrs Bengal Coal Company Ltd., and their workmen. The issue referred to the tribunal for adjudication relates to the alleged action of the management of Barmondia 3/4 Pits Colliery by Messrs Bengal Coal Company Limited in reducing the piece-rate wages of the specified workmen from 0.64 paise to 0.45 paise per tub. Barmondia 3/4 Pits Colliery is not owned by Messrs Bengal Coal Company Limited, but is owned by Messrs New Beerbhoom Coal Company Limited. Accordingly, the New Beerbhoom Coal Company Limited contended that the reference was neither valid nor can the tribunal have any jurisdiction to adjudicate the matter referred to it and prayed that the tribunal should not proceed further with the reference.

5. The Bengal Coal Company Limited in its written statement in paragraph 5. reiterated all those that the Beerbhoom Coal Company Limited in their written

statement had stated. The Union, representing the workman in paragraph 1 of their written statement stated that Barmondia 3/4 Pits Colliery under the management of New Beerbboom Coal Company Limited had erroneously described as under the management of Messrs Bengal Coal Company Limited in the order of reference, employs many workers in the same colliery and that New Beerbboom Coal Company Limited and Messrs Bengal Coal Company Limited are the two sisters concerns previously under Messrs Andrew Yule and Company Limited. In paragraph 10 of the written statement for the workmen it is alleged that the Bengal Coal Company Limited has no *locus standi* in the adjudication proceedings.

6. In spite of the order issuing the corrigendum on 9th August, 1971, as the reference stands it is the Bengal Coal Company Limited who has the *locus standi* to take part in the proceedings and not New Beerbboom Coal Company Limited, although New Beerbboom Coal Company Limited, as I have already observed, volunteered to file its written statement. Be that as it may, the parties to the adjudication proceedings in the order of reference are for the management of Barmondia 3/4 Pits Colliery Messrs Bengal Coal Company Limited and for the Opposite party the workmen of the colliery. So, by issuing the corrigendum, correcting thereby the name of the management party to the original reference with effect from 9th August, 1971, a new management party to the original reference has been added in substitution for the management party to the original reference. The New Beerbboom Coal Company Limited, is a legal entity distinct and different from the Bengal Coal Company Limited, i.e., the two limited companies, and are two separate and distinct juridical personalities. So, even if the corrigendum was issued and the management party to the original reference was thereby changed the original reference, however, can in law neither be considered withdrawn nor cancelled. See Dabur (S. K. Barman Private limited, Deoghar and their workmen, 1967-II-LLJ 863 and Supreme Court's observation by their Lordships at page 864). In the Industrial Disputes Act, 1947 there is no provision authorising the Government, after a dispute has been notified and referred to for adjudication by a tribunal, to issue a corrigendum, as in the present case, by altering the name of a party to the original reference as originally made, purporting to make thereby a new reference as it were between new parties. Section 10(4) of the Industrial Disputes Act reads as follows:

"Wherein an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be shall confine its adjudication to those points and matter incidental thereto."

So, after a reference specifying the points in dispute is received by a tribunal for adjudication, the Government can, by an appropriate order before the award is made only specify some additional points in the reference for adjudication. The points originally specified in the reference and the additional points specified by an order passed subsequent to the original order of reference shall have to be adjudicated as well as matters incidental to all such points between the parties as they are in the original order of reference. There is no provision in any of the Sections of the Industrial Disputes Act that after a dispute has been referred to for adjudication, the Government can change by issuing a corrigendum the parties to the original reference by substituting a party to the original reference for an altogether new party. In Dabur's case, *sua sponte*, their Lordships of the Supreme Court at page 863 of the report have been pleased to observe that the Government can make correction of a mere clerical error in the order of Reference, and in

making that observation expressed themselves in the following terms:—

"The finding that it was a clerical error means that the Government in fact intended to make the reference to the labour court, Ranchi; but while actually scribing the order of reference, a mistake was committed by the writer of putting down Patna instead of Ranchi. Such a clerical error can always be corrected and such a correction does not amount either to the withdrawal of the reference from, or cancellation of the reference to, the labour court, Patna."

So, the corrigendum in the present case, issued by the Government, as held by their Lordships in Dabur's case may be construed in two ways, either the original reference has been withdrawn or the original reference has been cancelled. But, there is no power in Government under the Industrial Disputes Act either to withdraw or to cancel a reference made to a tribunal for adjudication. The Section 15 of the Industrial Disputes Act reads, "Where an industrial dispute has been referred to a Labour Court, Tribunal or National Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, as soon as it is practicable on the conclusion thereof, submit its award to the appropriate Government". So, once a reference is received by a tribunal and registered, it must hold its proceedings ending in an award. There can be no half-way house between the two. The order of reference, as laid down by their Lordships of the Supreme Court, when affected by mere clerical error, as explained by their Lordships in the observations just quoted, can be corrected by the Government. Substitution of a party to the original reference for a new party, by issuing a corrigendum, as in the present case, to the original order of reference, is not a mere clerical error. It is an error, if any, which vitally affects the jurisdiction of the tribunal and the legality of the reference as constituted. Once reference has been received and registered and parties to the reference have filed their statements, the tribunal must proceed upto the stage of rendering its award. Either the Supreme Court or the High Court may for sufficient reason prevent a tribunal who has received a reference and has registered it, from proceeding further in any manner as either of the authorities may deem fit and proper. Once a reference has been received and registered as in this case, there is no power in the Government under the Industrial Disputes Act to withdraw or cancel the reference or to amend by addition and substitution of parties or subject-matter in the original order of reference pending adjudication. The only power is to specify additional points in the order of reference for adjudication under Section 10(4) of the Industrial Disputes Act. The corrigendum in the present case, therefore, has been illegal and *ultra vires* the jurisdiction of the Government. The original reference pending adjudication before this Tribunal must, therefore, stand and this tribunal cannot take any notice of the corrigendum so as to alter the parties to the reference as originally made. The Government, under the Industrial Disputes Act cannot, therefore, either withdraw or cancel a reference pending adjudication by a tribunal nor can it amend the reference so as to introduce a new party to the reference substituting for the original party to the reference. The error in relation to a party to a reference is not a mere clerical error but is a vital error, when one juridical person, made a party to the reference, has no legal and factual *locus standi* in any matter relating to the dispute referred to for adjudication by the tribunal by the Government. In the present case, as the original reference stands, the Barmondia 3/4 Pits Colliery is not owned by Bengal Coal Company Limited who is the party representing the colliery in the original reference now under adjudication by this tribunal. Thus, in view of the legal position and the statement of both the parties to the reference, the original reference suffers

from inherent illegality and is *ultra vires* the jurisdiction of the Government to refer the dispute under reference for adjudication by this tribunal. This Tribunal cannot in law take any action on the corrigendum issued by the Government in the circumstances I have already reviewed.

7. Accordingly, the original reference now before me for adjudication is inherently illegal and *ultra vires* the jurisdiction of the Government to refer the dispute under reference for adjudication by this tribunal. As Section 15 of the Industrial Disputes Act enjoins, this Tribunal records that the reference being illegal and *ultra vires* the jurisdiction of the Government does not confer jurisdiction to this Tribunal to adjudicate on the dispute under reference. Therefore, the reference being not maintainable, is rejected.

This is my award.

Dated,

March 10th, 1972.

(Sd.) S. N. BAGCHI,
Presiding Officer.

[No. L/1912/16/71-LRII.]

BALWANT SINGH, Under Secy.

(Department of Labour and Employment)

ORDER

New Delhi, the 21st March 1972

S.O. 933.—Whereas an industrial dispute exists between the employers in relation to Cantonment Board, Kanpur and its workmen represented by the Uttar Pradesh Chhawani Board Karamchari Sangh, Kanpur;

And whereas the said employers and workmen have, by a written agreement, in pursuance of the provisions of sub-section (1) of section 10A of the Industrial Disputes Act, 1947 (14 of 1947), agreed to refer the said dispute to arbitration by the person specified therein, and a copy of the said arbitration agreement has been forwarded to Central Government;

Now, therefore, in pursuance of sub-section (3) of section 10A of the said Act, the Central Government hereby publishes the said arbitration agreement which was received by it on the 6th March, 1972.

AGREEMENT

(Under Section 10A of the Industrial Disputes Act 1947)

BETWEEN

NAME OF THE PARTIES:

Representing employers—Shri H. Nagabhushanam, Executive Officer, Cantonment Board, Kanpur.

Representing the Workmen—Shri J. P. Dubey, General Secretary, A. P. Chhawani Board Karamchari Sangh, 64-Tagore Road, Kanpur.

It is hereby agreed between the parties to refer the following dispute to the arbitration of Shri P. C. Rai, Regional Labour Commissioner (C), Kanpur.

(i) Specific matters in dispute—"Whether the management of Cantonment Board, Kanpur is justified in taking the seniority from the date of appointment in light of para 23 of the N.I.T. Award of 1960 or from the date of exemption."

(ii) Details of the parties to the dispute including the name and address of establishment or undertaking involved.—Executive Officer, Cantonment Board, Kanpur and U. P. Chhawani Board Karamchari Sangh, Kanpur.

(iii) Total number of workmen employed in the undertaking.—600.

(iv) Name of the Union, if any representing the workmen in question.—U. P. Chhawani Board Karamchari Sangh, Kanpur.

(v) Estimated number of workmen affected or likely to be affected by the dispute.—35.

We further agree that the decision of the arbitrator shall be binding on us.

The arbitrator shall give his award within the period of three months or within such further time as is extended by mutual agreement between us in writing. In case the award is not made within the period aforementioned, the reference to arbitration shall stand automatically cancelled and we shall be free to negotiate for fresh arbitration.

Representing workmen:

(Sd.) ILLEGIBLE.

Witnesses:

1. (Sd.) D. P. SRIVASTAVA.
2. (Sd.) TEHAL SINGH.

Representing employers:

(Sd.) H. NAGABHUSHANAM.

In the presence of

(Sd.) H. TOPNO,
Assist. Labour Commissioner (C), Kanpur.

Written Consent of the Arbitrator

I, Shri P. C. Rai, Regional Labour Commissioner (Central) Kanpur hereby agree to act as an Arbitrator in the case of Breach of the Terms para 23 of the N.I.T. Award of 1960 by the Executive Officer, Cantonment Board, Kanpur.

(Sd.) P. C. RAI,
Regional Labour Commissioner (C), Kanpur.

[No. F. L-13013/1/72-LR I.]

S. S. SAHASRANAMAN, Under Secy.

(अम और रोजगार विभाग)

आवेदन

नई दिल्ली, 21 मार्च, 1972

का० आ० 933.—यतः कैन्टोनमेंट बोर्ड, कानपुर के नियोजकों और उनके कर्मकारों के बीच, जिनका प्रतिनिधित्व उत्तर प्रदेश छाती बोर्ड कर्मचारी संघ, कानपुर करता है, एक आधिकारिक विवाद विद्यमान है ;

ओर यतः उक्त नियोजकों और कर्मकारों ने आधिकारिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 10-की उपधारा (1) के उपबन्धों के अनुसरण में एक लिखित करार द्वारा उक्त विवाद को उसमें वर्णित व्यक्ति के माध्यम के लिये निर्देशित करने का कारार कर लिया है और उक्त माध्यमस्थम करार की एक प्रति केन्द्रीय सरकार को भेज दी गई है ;

अतः, अब, उक्त अधिनियम की धारा 10-की उपधारा (3) के उपबन्धों के अनुसरण में, केन्द्रीय सरकार उक्त माध्यमस्थम करार को, जो उसे 6 मार्च, 1972 को मिला था, एलडब्ल्यूए प्रकाशित करती है ।

(करार)

(श्रौद्धोगिक विवाद अधिनियम, 1947 की घारा 10-के अधीन)

पक्षकारों के नाम :

नियोजकों का प्रतिनिधित्व करने वाले : 1. श्री एच० नागभूषणाम, कार्यकारी अधिकारी, कैन्टोनमेंट बोर्ड, कानपुर।

कर्मकारों का प्रतिनिधित्व करने वाले : 1. श्री जे० पी० दुबे, महासचिव, य० पी० छावनी बोर्ड कर्मचारी संघ, 54, टैगोर रोड, कानपुर।

पक्षकारों के बीच निम्नलिखित श्रौद्धोगिक विवाद को (श्री पी० सी० राय, भेदीय श्रमायुक्त) (के०), कानपुर के माध्यस्थम् के लिए निर्वैशित करने का करार किया गया है।

1. विनिविष्ट विवादग्रस्त विषय : "क्या कैन्टोनमेंट बोर्ड, कानपुर प्रबन्ध मण्डल द्वारा राष्ट्रीय श्रौद्धोगिक अधिकरण के 1960 के पंचाट के अनुच्छेद 23 को ध्यान में रखते हुये ज्येष्ठता नियुक्ति की तारीख से लेनी चाहिए कि छूट की तारीख से।"

(2) विवाद के पक्षकारों का विवरण जिसमें अंतर्वलित स्थापन या उपक्रम का नाम और पता भी सम्मिलित है : 1. कार्यकारी अधिकारी कैन्टोनमेंट बोर्ड, कानपुर।

और,

य० पी० छावनी बोर्ड कर्मकारी संघ, कानपुर।।।

(3) उपक्रम में नियोजित कर्मकारों की कुल संख्या 600

(4) यदि कोई संघ प्रश्नगत कर्मकारों का प्रतिनिधित्व करता हो तो उसका नाम: य० पी० छावनी बोर्ड कर्मचारी संघ, कानपुर।

(5) विवाद द्वारा प्रभावित या सम्भाव्यतः प्रभावित होने वाले कर्मकारों की प्राक्कलित संख्या: 35।

हम यह करार भी करते हैं कि माध्यस्थ का विनिश्चय हम पर आवश्यक कर होगा।

माध्यस्थ अपना पंचाट तीन साल की कलाक्षिया इतने और समय के भीतर जो हमारे बीच पारस्परिक लिखित करार द्वारा बढ़ाया जाय, देगा। यदि पूर्व वर्णित कलाक्षियि के भीतर पंचाट नहीं दिया जाता तो माध्यस्थम् के लिये निदेश स्वतः

रह हो जायेगा और हम नये माध्यस्थम् के लिये बातचीत करने को स्वतंत्र होंगे।

पक्षकारों के हस्ताक्षर :

कर्मकारों का प्रतिनिधित्व

करने वाले

ह०/ अपाध्य

नियोजकों का प्रतिनिधित्व

करने वाले

ह०/ ए० नाग-

भूषण

साक्षी :

1. ह०/- डी० पी० श्रीवास्तव।

2. ह०/- टहल सिंह।

उपस्थिति में

ह०/- एच० टोपनों

साहृदयक श्रमायुक्त (केन्द्रीय),

कानपुर।

माध्यस्थ की लिखित सहमति

मैं, श्री पी० सी० राय, भेदीय श्रमायुक्त (केन्द्रीय), कानपुर, एतद्वारा राष्ट्रीय श्रौद्धोगिक अधिकरण के 1960 के पंचाट की शर्तों के अनुच्छेद 23 के, कार्यकारी अधिकारी, कैन्टोनमेंट, बोर्ड, कानपुर द्वारा उल्लंघन के मामले में माध्यस्थ के रूप में काम करने के लिए सहमति देता हूँ।

ह०/- पी० सी० राय,

भेदीय श्रमायुक्त (केन्द्रीय),

कानपुर।

[सं० एफ० एल०-13013/1/72-एल० आर०-1]

एस० एस० सहस्रनामन, अवर सचिव।

MINISTRY OF FINANCE

(Department of Expenditure)

New Delhi, the 1st March, 1972

S.O. 934.—In exercise of the powers conferred by the proviso to article 309 and clause (5) of article 148 of the Constitution and, after consultation with the Comptroller and Auditor General in relation to persons serving in the Indian Audit and Accounts Department, the President hereby makes the following rules, namely:—

CHAPTER I—Preliminary

1. **Short title and commencement.**—(1) These rules may be called the Central Civil Services (Pension) Rules, 1972.

(2) They shall come into force on the 1st June, 1972.

2. Application.—Save as otherwise provided in these rules, these rules shall apply to Government servants including civilian Government servants in the Defence Services, appointed substantively to civil services and posts in connection with the affairs of the Union which are borne on pensionable establishments, but shall not apply to:—

- (a) railway servants;
- (b) persons in casual and daily rated employment;
- (c) persons paid from contingencies;
- (d) persons entitled to the benefits of a Contributory Provident Fund;
- (e) members of the all India Services;
- (f) persons locally recruited for service in diplomatic, Consular or other Indian establishments in foreign countries;
- (g) persons employed on contract except when the contract provides otherwise; and
- (h) persons whose terms and conditions of service are regulated by or under the provisions of the Constitution or any other law for the time being in force.

3. Definitions.—In these rules, unless the context otherwise requires:—

- (1) (a) 'Audit Officer' means the Accounts and Audit Officer, whatever his official designation, who authorises the disbursement of pay and allowances of a Government servant;
- (b) 'average emoluments' means average emoluments as determined in accordance with rule 34;
- (c) 'child' means a child of the Government servant who, if a son, is under eighteen years of age and if a daughter, is unmarried and is under twenty-one years of age and the expression 'children' shall be construed accordingly;
- (d) 'Defence Services' means services under the Government of India in the Ministry of Defence, and in the Defence Accounts Department under the control of the Ministry of Finance (Department of Expenditure) (Defence Division), paid out of the Defence Services Estimates and not permanently subject to the Air Force Act, 1950 (45 of 1950) or the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957);
- (e) 'emoluments' means emoluments as defined in rule 33;
- (f) 'family pension' means contributory family pension admissible under rule 54 and includes non-contributory family admissible under rule 55;
- (g) 'foreign service' means service in which a Government servant receives his pay with the sanction of the Government from any source other than the Consolidated Fund of India or of a State;
- (h) 'Form' means a Form appended to these rules;
- (i) 'Government' means the Central Government;
- (j) 'gratuity' includes:—
- (1) 'service gratuity' payable under sub-rule (1) of rule 49;

- (ii) 'death-cum-retirement gratuity' payable under sub-rule (1) or sub-rule (3) of rule 50; and
- (iii) 'residuary gratuity' payable under sub-rule (2) of rule 50;
- (k) 'Head of a Department' means an authority specified in Schedule I to the Delegation of Financial Powers Rules, 1958, and includes such other authority or person whom the President may, by order, specify as Head of a Department;
- (l) 'Head of Office' means a gazetted officer declared as such under rule 10-A of the Delegation of Financial Powers Rules, 1958, and includes such other authority or person whom the competent authority may, by order, specify as Head of Office;
- (m) 'Local Fund administered by Government' means the fund administered by a body which, by law or rule having the force of law, comes under the control of the Government and over whose expenditure the Government retains complete and direct control;
- (n) 'minor' means a person who has not completed the age of eighteen years;
- (o) 'pension' includes gratuity except when the term pension is used in contradistinction to gratuity;
- (p) 'pension sanctioning authority' means the authority competent to sanction pension under rule 60;
- (q) 'qualifying service' means service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules;
- (r) 'retirement benefits' includes pension or service gratuity, and death-cum-retirement gratuity, where admissible;
- (s) 'Treasury' includes a Sub-Treasury.

(2) Words and expressions used herein and not defined but defined in the Fundamental Rules have the meanings respectively assigned to them in those Rules.

4. Government servants transferred from services and posts to which these rules do not apply.—(1) A Government servant who is transferred permanently to a service or post to which these rules apply from a service or post to which these rules do not apply shall become subject to these rules:

Provided that it shall be open to him, within six months of the date of issue of the order of his permanent transfer or, if he is on leave on that day, then, within six months of his return from leave, whichever is later, to elect to be governed by the pension rules to which he was subject immediately before the date of his transfer.

(2) The option under the proviso to sub-rule (1) shall be exercised in writing and communicated to the authority making such order of transfer.

(3) The option, once exercised, shall be final.

CHAPTER II—General Conditions

5. Regulation of claims to pension or family pension.—(1) Any claim to pension or family pension shall be regulated by the provisions of these rules in force at the time when a Government servant retires or is

retired or is discharged or is allowed to resign from service or dies, as the case may be.

(2) The day on which a Government servant retires or is retired or is discharged or is allowed to resign from service, as the case may be, shall be treated as a non-working day but the date of death shall be treated as a working day.

6. Full pension subject to approved service.—(1) Except for contributory pension admissible under rule 54, full pension admissible under these rules shall not be sanctioned to a Government servant unless the service rendered by that Government servant has been approved by the pension sanctioning authority as satisfactory.

(2) If such service has not been satisfactory, the pension sanctioning authority may make such reduction in the amount of pension, or gratuity, or both, as that authority may think proper:

Provided that in a case where the pension sanctioning authority is subordinate to the appointing authority, no order regarding reduction in the amount of pension shall be made without the approval of the appointing authority:

Provided further the amount of pension shall not be reduced below the limit specified in sub-rule (5) of rule 49.

(3) For the purposes of sub-rule (2) the expression "appointing authority" shall mean the authority which is competent to make appointments to the service or post from which the Government servant retires.

(4) (a) The reduction referred to in sub-rule (2) shall be of a permanent character.

(b) The measure of reduction in the amount of pension shall be the extent by which the Government servant's service as a whole failed to reach a satisfactory standard and no attempt shall be made to equate the amount of reduction with the amount of loss caused to the Government.

(5) The pension sanctioned under these rules shall not be reduced although proof of the service having been not satisfactory may come to the notice of the pension sanctioning authority subsequent to the sanction of pension.

(6) Whenever in the case of a Government servant the President passes an order (whether original or appellate) awarding a pension including gratuity less than the maximum admissible under these rules, the Union Public Service Commission shall be consulted before the order is passed.

(7) Nothing in this rule shall apply:

- (a) where a part of pension has been withheld or ordered to be recovered under rule 9; or
- (b) where a part of pension has been reduced under rule 40; or
- (c) to effect any recovery which has the result of punishment.

7. Limitations on number of pensions.—(1) A Government servant shall not earn two pensions in the same service or post at the same time or by the same continuous service.

(2) Except as provided in rule 19, a Government servant who, having retired on a superannuation pension or retiring pension, is subsequently re-employed shall not be entitled to a separate pension or gratuity for the period of his re-employment.

8. Pension subject to future good conduct.—(1) (a) Future good conduct shall be an implied condition of every grant of pension and its continuance under these rules.

(b) The pension sanctioning authority may, by order in writing, without or withdraw a pension or part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct:

Provided that no such order shall be passed by an authority subordinate to the authority competent to make an appointment to the post held by the pensioner immediately before his retirement from service;

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the limit specified in sub-rule (5) of rule 49.

(2) Where a pensioner is convicted of a serious crime by a court of law, action under sub-rule (1) shall be taken in the light of the judgment of the court relating to such conviction.

(3) In a case not failing under sub-rule (2), if the authority referred to in sub-rule (1) considers that the pensioner is *prima facie* guilty of grave misconduct, it shall before passing an order under sub-rule (1),

(a) serve upon the pensioner a notice specifying the action proposed to be taken against him and the ground on which it is proposed to be taken and calling upon him to submit, within fifteen days of the receipt of the notice or such further time not exceeding fifteen days as may be allowed by the pension sanctioning authority, such representation as he may wish to make against the proposal; and

(b) take into consideration the representation if any, submitted by the pensioner under clause (a).

(4) Where the authority competent to pass an order under sub-rule (1) is the President, the Union Public Service Commission shall be consulted before the order is passed.

(5) An appeal against an order under sub-rule (1), passed by any authority other than the President, shall lie to the President and the President shall, in consultation with the Union Public Service Commission, pass such orders on the appeal as he deems fit.

Explanation.—In this rule,—

- (a) the expression 'serious crime' includes a crime involving an offence under the Official Secrets Act, 1923 (19 of 1923);
- (b) the expression 'grave misconduct' includes the communication or disclosure of any secret official code or pass-word or any sketch, plan, model, article, note, document or information, such as is mentioned in section 5 of the Official Secrets Act, 1923 (19 of 1923) (which was obtained while holding office under the Government) so as to prejudicially affect the interests of the general public or the security of the State.

9. Right of President to withhold or withdraw pension.—(1) The President reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed.

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension

shall not be reduced below the limit specified in sub-rule (5) of rule 49.

(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment,

- (i) shall not be instituted save with the sanction of the President;
- (ii) shall not be in respect of any event which took place more than four years before such institution, and
- (iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose, or in respect of an event which took place, more than four years before such institution.

(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 65 or rule 74, as the case may be, shall be sanctioned.

(5) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule,—

- (a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and
- (b) judicial proceedings shall be deemed to be instituted,—
 - (i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognisance, is made, and
 - (ii) in the case of civil proceedings, on the date the plaint is presented in the court.

10. Commercial employment after retirement.—(1) If a pensioner who, immediately before his retirement was a member of Central Service Class I, wishes to accept any commercial employment before the expiry of two years from the date of his retirement, he shall obtain the previous sanction of the Government to such

acceptance and no pension shall be payable to a pensioner who accepts a commercial employment without such sanction in respect of any period for which he is so employed or such longer period as the Government may direct:

Provided that a Government servant who was permitted by the Government to take up a particular form of commercial employment during his leave preparatory to retirement or during refused leave shall not be required to obtain subsequent permission for his continuance in such employment after retirement.

(2) In this rule,—

- (a) the expression "commercial employment" means:—
 - (i) an employment in any capacity including that of an agent, under a company, co-operative society, firm or individual engaged in trading, commercial, industrial, financial or professional business and includes also a directorship of such company and partnership of such firm, but does not include employment under a body corporate, wholly or substantially owned or controlled by the Government;
 - (ii) setting up practice, either independently or as a partner of a firm, as adviser or consultant in matters in respect of which the pensioner—
 - (A) has no professional qualifications and the matters in respect of which the practice is to be set up or is carried on are relatable to his official knowledge or experience, or
 - (B) has professional qualifications but the matters in respect of which such practice is to be set up are such as are likely to give his clients an unfair advantage by reason of his previous official position, or
 - (iii) has to undertake work involving liaison or contact with the offices or officers of the Government;

Explanation:—For the purposes of this clause "employment under a co-operative society" includes the holding of any office, whether elective or otherwise, such as that of President, Chairman, Manager, Secretary, Treasurer and the like, by whatever name called in such society;

- (b) the expression "date of retirement", in relation to a Government servant re-employed after retirement, without any break, either in the same or in another Class I post under the Government or in any other equivalent post under a State Government, means the date on which such Government servant finally ceases to be so re-employed in Government service.

11. Restriction on practice in Income-tax and other cases after retirement.—(1) No pensioner who, while in service, belonged to the Indian Revenue Service or who, having been a member of any other Central Service Class I, retired from a post under the Department of Revenue and Insurance in the Ministry of Finance, shall set up practice before the expiry of two years from the date of his retirement.

- (a) in any area which was within the local limit of his jurisdiction during the last three years immediately before his retirement;
- (b) in areas other than those referred to in clause (a) without the previous sanction of the President.

(2) No pension shall be payable to such pensioner who sets up practice in contravention of sub-rule (1) in respect any period for which he has set up practice or such longer period as the Government may direct,

Explanation.—For the purposes of this rule,

- (i) the expression "practice" means practice, either independently or as a partner of a firm, as consultant or adviser in matters relating to Income-tax, wealth tax, duties of customs, duties of Central Excise or estate duty, as representative of assessees in proceedings under the enactment relating to the levy of such tax or duty;
- (ii) the expression "date of retirement" shall have the same meaning as in sub-rule (2) of rule 10.

12. Employment after retirement under a Government outside India.—If a pensioner who, immediately before his retirement was a member of Central Service Class I, wishes to accept any employment under any Government outside India, he shall obtain the previous permission of the Central Government for such acceptance, and no pension shall be payable to a pensioner who accepts such an employment without proper permission in respect of any period for which he is so employed or such longer period as the Government may direct:

Provided that a Government servant who was permitted by the Central Government to take up a particular form of employment under any Government outside India during his leave preparatory to retirement shall not be required to obtain subsequent permission for his continuance in such employment after retirement.

Explanation:—For the purposes of this rule, the expression "employment under any Government outside India" includes employment under a local authority or corporation or any other institution or organisation which functions under the supervision or control of a Government outside India, or an employment under an International Organisation of which the Government of India is not a member.

CHAPTER III—Qualifying Service

13. Commencement of qualifying service. Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post:

Provided further that—

- (a) in the case of a Government servant in a Class IV service or post who held a lien or a suspended lien on a permanent pensionable post prior to the 17th April, 1950, service rendered before attaining the age of sixteen years shall not count for any purpose, and
- (b) in the case of a Government servant not covered by class (a), service rendered before attaining the age of eighteen years shall not count, except for compensation gratuity.

14. Conditions subject to which service qualifies.—(1) The service of a Government servant shall not qualify unless his duties and pay are regulated by the Government, or under conditions determined by the Government.

(2) For the purposes of sub-rule (1), the expression "service" means service under the Government and paid by that Government from the Consolidated Fund of India or a Local Fund administered by that Government but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by that Government.

(3) In the case of a Government servant belonging to a State Government, who is permanently transferred to

a service or post to which these rules apply, the continuous service rendered under the State Government in an officiating or temporary capacity, if any, followed without interruption by substantive appointment, or the continuous service rendered under that Government in an officiating or temporary capacity, as the case may be, shall qualify:

Provided that nothing contained in this sub-rule shall apply to any such Government servant who is appointed otherwise than by deputation to a service or post to which these rules apply.

15. Counting of service on probation.—Service on probation against a post if followed by confirmation in the same or another post shall qualify.

16. Counting of service as apprentice.—Service as an apprentice shall not qualify, except in the case of S.A.S. apprentice in the Indian Audit and Accounts Department or the Defence Accounts Department.

17. Counting of service on contract.—(1) A person who is initially engaged by the Government on a contract for a specified period and is subsequently appointed to the same or another post in a substantive capacity in a pensionable establishment without interruption of duty, may opt either—

- (a) to retain the Government contribution in the Contributory Provident Fund with interest thereon including any other compensation for that service; or
- (b) to agree to refund to the Government the monetary benefits referred to in clause (a) or to forgo the same if they have not been paid to him and count in lieu thereof the service for which the aforesaid monetary benefits may have been payable.

(2) The option under sub-rule (1) shall be communicated to the Head of Office under intimation to the Audit Officer within a period of three months from the date of issue of the order of permanent transfer to pensionable service, or if the Government servant is on leave on that day, within three months of his return from leave, whichever is later.

(3) If no communication is received by the Head of Office within the period referred to in sub-rule (2), the Government servant shall be deemed to have opted for the retention of the monetary benefits payable or paid to him on account of service rendered on contract.

18. Counting of pre-retirement civil service in the case of re-employed Government servants.—(1) A Government servant who, having retired on compensation pension or invalid pension or compensation gratuity or invalid gratuity, is re-employed and appointed substantively to a service or post to which these rules apply may exercise option either—

- (a) to continue to draw the pension or retain the gratuity sanctioned for his earlier service, in which case his former service shall not count as qualifying service, or
- (b) to cease to draw his pension or refund the gratuity, including the death-cum-retirement gratuity, if any, as the case may be, and count his previous service as qualifying service in which case the pension intermediately drawn shall not be required to be refunded.

(2) (a) The option under sub-rule (1) shall be exercised within three months of the date of issue of the order of substantive appointment to a service or post on re-employment or if the Government servant is on leave on that day, within three months of his return from leave, whichever is later.

(b) If no option is exercised within the period referred to in clause (a), the Government servant

shall be deemed to have opted for clause (a) of sub-rule (1).

(3) In the case of a Government servant who opts for clause (a) of sub-rule (1) the pension or gratuity admissible for his subsequent service is subject to the limitation, that service gratuity or the capital value of the pension and death-cum-retirement gratuity, if any, shall not be greater than the difference between the value of the pension and death-cum-retirement gratuity, if any, that would be admissible at the time of the Government servant's final retirement if the two periods of service were combined and the value of retirement benefits already granted to him for the previous service.

NOTE.—The capital value of pension shall be calculated in accordance with the Table prescribed by the President under the Civil Pensions (Commutation) Rules applicable at the time of the second or final retirement.

(4) (a) A Government servant who opts for clause (b) of sub-rule (1) shall be required to refund the gratuity received in respect of his earlier service, in monthly instalments not exceeding thirty-six in number, the first instalment beginning from the month following the month in which he exercised the option.

(b) The right to count previous service as qualifying service shall not revive until the whole amount has been refunded.

(5) In the case of a Government servant, who, having elected to refund the gratuity, dies before the entire amount is refunded, the amount of unrefunded gratuity shall be adjusted against the death-cum-retirement gratuity which may become payable to his family.

19. Counting of military service rendered before civil employment.—(1) A Government servant who is re-employed in a civil service or post before attaining the age of superannuation and who, before such re-employment, had rendered regular military service after attaining the age of eighteen years, may, on his confirmation in a civil service or post, opt either:—

(a) to continue to draw the military pension or retain gratuity received on discharge from military service, in which case his former military service shall not count as qualifying service; or

(b) to refund the pension or gratuity and count the previous military service as qualifying service, in which case the service so allowed to count shall be restricted to a service, within or outside the employee's unit or department in India or elsewhere, which is paid from the Consolidated Fund of India or for which pensionary contribution has been received by the Government.

(2) (a) The option under sub-rule (1) shall be exercised within three months of the date of issue of the order of substantive appointment to a civil service or post on re-employment, or if the Government servant is on leave on that day, within three months of his return from leave, whichever is later.

(b) If no option is exercised within the period referred to in clause (a), the Government servant shall be deemed to have opted for clause (a) of sub-rule (1).

(3) (a) A Government servant who opts for clause (b) of sub-rule (1) shall be required to refund the pension, bonus or gratuity received in respect of his earlier military service, in monthly instalments not exceeding thirty-six in number, the first instalment beginning from the month following the month in which he exercised the option.

(b) The right to count previous service as qualifying service shall not revive until the whole amount has been refunded:

(4) In the case of a Government servant who, having elected to refund the pension, bonus or gratuity, dies before the entire amount is refunded, the unrefunded amount of pension or gratuity shall be adjusted against the death-cum-retirement gratuity which may become payable to his family.

(5) When an order is passed under this rule allowing previous regular military service to count as part of the service qualifying for civil pension, the order shall be deemed to include the condonation of interruption in service, if any, in the military service and between the military and civil service.

NOTE.—The provisions of this sub-rule shall apply to an employee who had rendered continuous temporary non-regular military service alone or in conjunction with war service and any interruption in service between the temporary non-regular military service and civil service may be condoned in accordance with the provisions of rule 28.

20. Counting of war service rendered before civil employment.—(1) A Government servant who, prior to his appointment in a civil service or post against war reserved or other permanent vacancy which arose for direct recruitment before the 1st January, 1948, had rendered satisfactory paid whole-time, enlisted or commissioned war service in the Armed Forces of India or in similar forces of a Commonwealth country during the period from the 3rd September, 1939 to the 1st April, 1946, which did not earn a service pension under the military rules, shall be allowed to count such service, including all kinds of leave on full rates of pay and sick leave taken during such service, as qualifying service, subject to the following conditions, namely:—

(a) in the case of a service or post in respect of which a minimum age is fixed for recruitment, no war service rendered below that age shall count as qualifying service;

(b) no contribution towards or share of pension earned as a result of counting war service rendered in a force of a Commonwealth country shall be claimed from the Government of that country;

(c) no refund of bonus or gratuity in respect of war service shall be deemed from the Government servant concerned.

(2) War service rendered by a Government servant who was appointed substantively to a civil service or post against vacancies which arose after the 31st December, 1947, shall, subject to the conditions specified in sub-rule (1), be treated as military service as provided in rule 19.

21. Counting of periods spent on leave.—All leave during service for which leave salary is payable shall count as qualifying service:

Provided that in the case of extraordinary leave the appointing authority may, at the time of granting such leave, allow the period of that leave to count as qualifying service if such leave is granted to a Government servant:—

(i) on medical certificate; or

(ii) due to his inability to join or rejoin duty on account of civil commotion; or

(iii) for prosecuting higher scientific and technical studies.

22. Counting of periods spent on training.—The Government may, by order, decide whether the time spent by a Government servant under training immediately before appointment to service under that Government shall count as qualifying service.

23. Counting of periods of suspension.—Time passed by a Government servant under suspension pending inquiry into conduct shall count as qualifying service

where, on conclusion of such inquiry, he has been fully exonerated or the suspension is held to be wholly unjustified; in other cases, the period of suspension shall not count unless the authority competent to pass orders under the rule governing such cases expressly declares at the time that it shall count to such extent as the competent authority may declare.

24. Forfeiture of service on dismissal or removal.—Dismissal or removal of a Government servant from a service or post entails forfeiture of his past service.

25. Counting of past service on reinstatement.—(1) A Government servant who is dismissed, removed or compulsorily retired from service, but is reinstated on appeal or review, is entitled to count his past services as qualifying service.

(2) The period of interruption in service between the date of dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement, and the period of suspension, if any, shall not count as qualifying service unless regularised as duty or leave by a specific order of the authority which passed the order of reinstatement.

26. Forfeiture of service on resignation.—(1) Resignation from a service or post entails forfeiture of past service;

Provided that a resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

(2) Interruption in service in a case falling under the proviso to sub-rule (1), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to the Government servant.

27. Effect of interruption in service.—(1) An interruption in the service of a Government servant entails forfeiture of his past service, except in the following cases:—

- (a) authorised leave of absence;
- (b) unauthorised absence in continuation of authorised leave of absence so long as the post of absence is not filled substantively;
- (c) suspension, where it is immediately followed by reinstatement, whether in the same or a different post, on where the Government servant dies or is permitted to retire or is retired on attaining the age of compulsory retirement while under suspension;
- (d) transfer to non-qualifying service in an establishment under the control of the Government if such transfer has been ordered by a competent authority in the public interest;
- (e) joining time while on transfer from one post to another.

(2) Notwithstanding anything contained in sub-rule (1), the pension sanctioning authority may, by order, commute retrospectively the periods of absence without leave as extraordinary leave.

28. Condonation of interruption in service.—(1) The appointing authority may, by order, condone interruptions in the service of a Government servant;

Provided that,—

- (i) the interruptions have been caused by reasons beyond the control of the Government servant;
- (ii) the total service excluding one or more interruptions, if any, not less than five years duration; and

(iii) the interruption, including two or more interruptions, if any, does not exceed one year.

(2) The period of interruption condoned under sub-rule (1) shall not count as qualifying service.

29. Addition to qualifying service when a Government servant is declared surplus.—(1) A Government servant, other than a Government servant in class IV service or post, who after having been declared surplus to the establishment in which he was serving and transferred to the Central Pool of surplus personnel in the Cabinet Secretariat, Department of Personnel, opts to retire voluntarily within two months of his transfer to the Pool and is permitted to retire, shall be entitled to have five years added to the qualifying service rendered by him:

Provided that the qualifying service rendered is not less than fifteen years and the resultant length of qualifying service after taking into account the aforesaid addition is not more than the service the Government servant could have counted had he retired on the date of his superannuation.

(2) In respect of a Government servant in class IV service or post the provisions of sub-rule (1) shall apply if he opts for voluntary retirement within a period of two months of the reporting of his name to the Director General of Employment and Training, after having been declared surplus in the establishment in which he was serving as a result of studies made by the Department of Administrative Reforms and the Staff Inspection Unit of the Department of Expenditure, Ministry of Finance.

30. Addition to qualifying service in special circumstances.—(1) The Government may, by order, allow a Government servant appointed to a service or post after the 31st March, 1960 to add to his service qualifying for superannuation pension (but not for any other class or pension), the actual period not exceeding one-fourth of the length of his service or the actual period by which his age at the time of recruitment exceeded twenty-five years or a period of five years, whichever is less, if the service or post to which the Government servant is appointed is one.—

- (a) for which post-graduate research, or specialist qualification, or experience in scientific technological or professional fields, is essential; and
- (b) to which candidates of more than twenty-five years of age are normally recruited:

Provided that this concession shall not be admissible to a Government servant unless his actual qualifying service at the time he quits Government service is not less than ten years:

Provided further that a Government servant who is recruited at the age of thirty-five years or more may, within a period of three months from the date of his appointment, elect to forgo his rights to pension whereupon he shall be eligible to subscribe to a Contributory Provident Fund.

(2) The option referred to in the second proviso to sub-rule (1), once exercised, shall be final.

(3) Where it is considered necessary to apply the concession under this rule to a particular service or post it shall be decided in consultation with the Ministry of Finance before a person is recruited to that service or post:

Provided that the Union Public Service Commission shall also be consulted if the recruitment to the service or post is made by that Commission.

31. Period of deputation to United Nations and other Organisations.—A Government servant deputed on foreign service, for a period of one year or more, to the United Nations' Secretariat or other United Nations'

Bodies, the International Monetary Fund, the International Bank of Reconstruction and Development, or the Asian Development Bank, may at his option:—

- (a) pay the pension contribution in respect of his foreign service and count such service as qualifying for pension under these rules; or
- (b) avail of the retirement benefits admissible under the rules of the aforesaid Organisation and not count such service as qualifying for pension under these rules:

Provided that where a Government servant opts for clause (b), retirement benefits shall be payable to him in India in rupees from such date and in such manner as the Government may, by order, specify:

Provided further that pension contributions, if any, paid by the Government servant, shall be refunded to him.

32. Verification of qualifying service after 25 years service.—Where a Government servant completes twenty-five years of service, the Audit Officer concerned in the case of a gazetted Government servant or the Head of Office, in consultation with the Audit Officer concerned, in the case of a non-gazetted Government servant shall, in accordance with the rules for the time being in force, verify the service rendered by such Government servant, determine the qualifying service and communicate to him the period of qualifying service so determined:

Provided that any such verification shall be subject to final verification of qualifying service which shall be made at the time of retirement of the Government servant.

CHAPTER IV—Emoluments and Average Emoluments

33. Emoluments.—The expression “emoluments” means pay as defined in rule 9(21) of the Fundamental Rules (including dearness pay, as determined by the order of the Government issued from time to time) which a Government servant was receiving immediately before his retirement or on the date of his death.

NOTE 1.—If a Government servant immediately before his retirement or death while in service had been absent from duty on leave for which leave salary is payable or having been suspended had been reinstated without forfeiture of service, the emoluments which he would have drawn had he not been absent from duty or suspended shall be the emoluments for the purposes of this rule:

Provided that any increase in pay (other than the increment referred to in Note 4) which is not actually drawn shall not form part of his emoluments.

NOTE 2.—Where a Government servant immediately before his retirement or death while in service had proceeded on leave for which leave salary is payable after having held a higher appointment whether in an officiating or temporary capacity, the benefit of emoluments drawn in such higher appointment shall be given only if it is certified that the Government servant would have continued to hold the higher appointment but for his proceeding on leave.

NOTE 3.—If a Government servant immediately before his retirement or death while in service had been absent from duty on extraordinary leave, or had been under suspension the period whereof does not count as service, the emoluments which he drew immediately before proceeding on such leave or being placed under suspension shall be the emoluments for the purposes of this rule.

NOTE 4.—If a Government servant immediately before his retirement or death while in service was on earned leave or leave on average pay, as the case may

be, and earned an increment, which was not withheld.

- (a) during the currency of the earned leave not exceeding one hundred and twenty days, or during the first one hundred and twenty days of earned leave exceeding one hundred and twenty days, or
- (b) during the currency of leave on average pay not exceeding four months, or during the first four months of leave on average pay exceeding four months.

such increment, though not actually drawn, shall form part of his emoluments.

NOTE 5.—Pay drawn by a Government servant in a tenure appointment shall be treated as emoluments:

Provided that the service in tenure appointment does not qualify for the grant of additional pension.

NOTE 6.—Pay drawn by a Government servant while on deputation to the Armed Forces of India shall be treated as emoluments.

NOTE 7. Pay drawn by a Government servant while on foreign service shall not be treated as emoluments, but the pay which he would have drawn under the Government had he not been on foreign service shall alone be treated as emoluments.

34. Average emoluments.—Average emoluments shall be determined with reference to the emoluments drawn by a Government servant during the last three years of his service.

NOTE 1.—If during the last three years of his service a Government servant had been absent from duty on leave for which leave salary is payable or having been suspended had been reinstated without forfeiture of service, the emoluments which he would have drawn had he not been absent from duty or suspended shall be taken into account for determining the average emoluments:

Provided that any increase in pay (other than the increment referred to in Note 3) which is not actually drawn shall not form part of his emoluments.

NOTE 2.—If, during the last three years of his service, a Government servant had been absent from duty on extraordinary leave, or had been under suspension the period whereof does not count as service, the aforesaid period of leave or suspension shall be disregarded in the calculation of the average emoluments and equal period before the three years shall be included.

NOTE 3.—In the case of a Government servant who was on earned leave or leave on average pay, as the case may be, during the last three years of service and earned an increment, which was not withheld,

- (a) during the currency of the earned leave not exceeding one hundred and twenty days, or during the first one hundred and twenty days of earned leave exceeding one hundred and twenty days, or
- (b) during the currency of leave on average pay not exceeding four months, or during the first four months of leave on average pay exceeding four months,

such increment, though not actually drawn, shall be included in the average emoluments.

CHAPTER V—Classes of Pensions and Conditions Governing their Grant

35. Superannuation pension.—A superannuation pension shall be granted to a Government servant who is retired on his attaining the age of compulsory retirement.

36. Retiring pension.—A retiring pension shall be granted—

- (a) to a Government servant who retires, or is retired, in advance of the age of compulsory retirement, in accordance with the provisions of rule 43 or rule 48 of these rules, or rule 56 of the Fundamental Rules or Article 439 of the Civil Service Regulations; and
- (b) to a Government servant who, on being declared surplus, opts for voluntary retirement in accordance with the provisions of rule 29 of these rules.

37. Pension on absorption in or under a corporation, company or body.—A Government servant who has been permitted to be absorbed in a service or post in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government shall, if such absorption is declared by the Government to be in the public interest, be deemed to have retired from service from the date of such absorption and shall be eligible to receive retirement benefits which he may have elected or deemed to have elected, and from such date as may be determined, in accordance with the orders of the Government applicable to him:

Provided that the Government shall have no liability for the payment of family pension in such a case:

Provided further that no declaration regarding absorption in the public interest in a service or post in or under such corporation, company or body shall be required in respect of a Government servant whom the Government may, by order, declare to be a scientific employee.

38. Invalid pension.—(1) A Government servant who is declared by the appropriate medical authority to be permanently incapacitated for further service in accordance with the instructions on the subject may be granted invalid pension.

(2) Where the medical authority referred to in sub-rule (1) has declared a Government servant fit for further service of less laborious character than that which he has been doing, he may, if possible, be employed on lower pay and if there be no means of employing him even on a lower pay he may be admitted to pension.

(3) (a) If the incapacity is directly due to the irregular or intemperate habits of a Government servant, no pension may be granted.

(b) If the incapacity has not been accelerated or aggravated by them, it shall be for the pension sanctioning authority to decide what reduction should be made on this account.

39. Compensation pension.—(1) If a Government servant is selected for discharge owing to the abolition of his permanent post, he shall, unless he is appointed to another post the conditions of which are deemed by the authority competent to discharge him to be at least equal to those of his own, have the option—

- (a) of taking compensation pension to which he may be entitled for the service he had rendered, or
- (b) of accepting another appointment on such pay as may be offered and continuing to count his previous service for pension.

(2) (a) Notice of at least three months shall be given to a Government servant in permanent employment before his services are dispensed with on the abolition of his permanent post.

(b) Where notice of at least three months is not given and the Government servant has not been provided with other employment on the date on which his services are dispensed with, the authority competent to dispense with his services may sanction the payment of a sum not exceeding the pay and allowances for the period by which the notice actually given to him falls short of three months.

(c) No compensation pension shall be payable for the period in respect of which he receives pay and allowances in lieu of notice.

(d) In case a Government servant is granted pay and allowances for the period by which the notice given to him falls short of three months and he is re-employed before the expiry of the period for which he has received pay and allowances, he shall refund the pay and allowances so received for the period following his re-employment.

(e) If a Government servant who is entitled to compensation pension accepts instead another appointment under the Government and subsequently becomes entitled to receive a pension of any class, the amount of such pension shall not be less than the compensation pension which he could have claimed if he had not accepted the appointment.

40. Compulsory retirement pension.—(1) A Government servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty pension or gratuity or both at a rate not less than two-thirds and not more than full invalid pension or gratuity or both admissible to him on the date of his compulsory retirement:

Provided that in the case of a Government servant to whom rule 46 applies, additional pension of not less than the limits mentioned in this rule may also be granted.

(2) Whenever in the case of a Government servant the President passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the full invalid pension admissible under these rules, the Union Public Service Commission shall be consulted before such order is passed.

Explanation.—In this sub-rule, the expression "pension" includes gratuity.

(3) A pension granted or awarded under sub-rule (1) or, as the case may be, under sub-rule (2), shall not be less than the limit specified in sub-rule (5) of rule 49.

41. Compassionate allowance.—(1) A Government servant who is dismissed or removed from service shall forfeit his pension and gratuity:

Provided that the authority competent to dismiss or remove him from service may, if the case is deserving or special consideration, sanction a compassionate allowance not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on invalid pension.

(2) A compassionate allowance sanctioned under the proviso to sub-rule (1) shall not be less than the limit specified in sub-rule (5) of rule 49.

CHAPTER VI

REGULATION OF AMOUNTS OF PENSIONS OF PRE-1938 ENTRANTS

42. Scope.—The provisions of this Chapter shall apply to a Government servant who on the 30th September, 1938, held a lien or a suspended lien on a permanent pensionable post under the Government or a Local Fund administered by the Government and had opted for the provisions relating to pension and gratuity as specified in clause (b) or clause (c) of paragraph 2 of the Ministry of Finance

Office Memorandum No. 3(16)-E(Spl)/50, dated the 2nd January, 1951, as amended by the Ministry of Finance Office Memorandum No. 3(16)-Est(Spl)/50, dated the 21st February, 1951.

43. Retirement on completion of 30 years or 25 years qualifying service.—(1) A retiring pension shall be granted to a Government servant who is permitted by the appointing authority to retire after completing qualifying service of thirty years.

(2) A Government servant who has completed twenty-five years qualifying service and who holds a service or post specified in clause (1) of Article 349-A of the Civil Service Regulations shall be entitled to a retiring pension if his resignation is accepted or if he is required by the Government to retire.

NOTE.—The Government retains an absolute right to retire a Government servant governed by this sub-rule after he has completed twenty-five years' qualifying service without giving any reasons and no claim

to special compensation on this account shall be entertained. This right shall not be exercised except when it is in the public interest to dispense with the further services of Government servant.

(3) A Government servant, who has elected to retire under this rule and has given necessary intimation to that effect to the appointing authority, shall be precluded from withdrawing his election subsequently except with the specific approval of such authority:

Provided that the request for withdrawal shall be made within the intended date of his retirement.

44. Regulation of amounts of pensions.—(1) In the case of a Government servant to whom sub-rules (2) and (3) do not apply, the amount of superannuation, retiring, invalid or compensation pension shall be regulated as follows, namely:—

Completed six monthly periods of qualifying service	Scale of pension	Maximum pension per annum
---	------------------	---------------------------

(1)

(2)

(3)

50 and above	30/60th of average employments	Rs. 5,000
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(2) In the case of a Government servant who holds a service or post specified in clause (1) of Article 349-A of the Civil Service Regulations, the amount of superannuation, retiring, invalid or compensation pension shall be regulated as follows, namely:—

Completed six monthly periods of qualifying service	Scale of pension	Maximum pension per annum
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(1)

(2)

(3)

Rs.

50	30/60th of average emoluments	5,000
51	30/60th of average emoluments	5,100
52	30/60th of average emoluments	.	.	.	.	.	5,200
53	30/60th of average emoluments	.	.	.	.	.	5,300
54	30/60th of average emoluments	.	.	.	.	.	5,400
55	30/60th of average emoluments	.	.	.	.	.	5,500
56	30/60th of average emoluments	.	.	.	.	.	5,600
57	30/60th of average emoluments	.	.	.	.	.	5,700
58	30/60th of average emoluments	.	.	.	.	.	5,800
59	30/60th of average emoluments	.	.	.	.	.	5,900
60 and above	30/60th of average emoluments	.	.	.	.	.	6,000

(3) In the case of members of the services and holders of the posts specified in Schedule V to the Superior Civil Services Rules, the amount of superannuation, retiring, invalid or compensation pension shall be regulated as follows, namely:—

after 25 years' qualifying service	.	.	.	.	.	.	Rs. 6,000 a year
after 25 1/2 years' qualifying service	.	.	.	.	.	.	Rs. 6,10 a year
after 26 years' of qualifying service	.	.	.	.	.	.	Rs. 6,200 a year
after 26 1/2 years' of qualifying service	.	.	.	.	.	.	Rs. 6,300 a year
after 27 years' of qualifying service	.	.	.	.	.	.	Rs. 6,400 a year
after 27 1/2 years' of qualifying service	.	.	.	.	.	.	Rs. 6,500 a year
after 28 years' of qualifying service	.	.	.	.	.	.	Rs. 6,600 a year
after 28 1/2 years' of qualifying service	.	.	.	.	.	.	Rs. 6,700 a year
after 29 years' of qualifying service	.	.	.	.	.	.	Rs. 6,800 a year
after 29 1/2 years' of qualifying service	.	.	.	.	.	.	Rs. 6,900 a year
after 30 and above years' qualifying service	.	.	.	.	.	.	Rs. 7,000 a year

(4) In calculating the length of service, fractions of a year equal to six months and above shall be treated as a completed six monthly period.

(5) The amount of pension shall be fixed at monthly rates and be expressed in whole rupees and where the pension contains a fraction of a rupee it shall be rounded off to the next higher rupee:

Provided that in no case a pension in excess of the maximum pension prescribed under this rule shall be allowed.

45. Eligibility to death-cum-retirement gratuity and family pension.—(1) A Government servant who has opted for clause (c) paragraph 2 of the Ministry of Finance Office Memorandum No. 3(16)-Espl./50, dated the 2nd January, 1951, as amended by the Ministry of Finance Office Memorandum No. 3(16)-Espl./50, dated the 21st February, 1951, shall be eligible for the death-cum-retirement gratuity as admissible under rule 50 and family pension as admissible under rule 54 or rule 55.

(2) The pension as admissible under rule 44 shall be reduced by the pension equivalent of such gratuity to be calculated in accordance with the Table prescribed by the President under the Civil Pensions (Commutation) Rules, applicable to the Government servant at the time of retirement.

46. Additional pension.—(1) A Government servant who retires while holding the post or posts included in the Schedule to Article 475-A of the Civil Service Regulations (hereinafter referred to in this rule as "the said Schedule") may be granted an additional pension—

- (a) at the rate of three hundred rupees for each completed year of effective service in any post included in the lower grade up to a maximum of one thousand five hundred rupees per annum; and
- (b) at the rate of five hundred rupees for each completed year of effective service in any post included in the upper grade up to a maximum of two thousand and five hundred rupees per annum for service in lower and upper grade appointments combined or in upper grade appointments alone:

Provided that in the case of a Government servant who has earned an additional pension by service in appointments in both the upper and lower grades, service for any broken period of a year in the upper grade may count as service in the lower grade if his additional pension would thereby be increased.

(2) A Government servant, who has held a temporary post which has been declared by the authority competent to create the post as carrying similar duties and responsibilities and which carries the same rate of pay as a post listed in the said Schedule, may be granted an additional pension in respect of that post at the rate and subject to the conditions prescribed in sub-rule (1).

(3) For the purposes of sub-rules (1) and (2), the expression "effective service" includes, besides periods of duty in a post mentioned in the said sub-rules,—

- (i) duty performed—
 - (a) in a post of corresponding rank and responsibility in foreign service, or
 - (b) on deputation on special duty, or
 - (c) in a temporary post, or
 - (d) in a permanent post in an officiating capacity,

to which a Government servant is transferred or appointed while holding the post mentioned in sub-rule (1) or sub-rule (2), if, in the case of a Government servant who held a post mentioned in sub-rule (1) in an officiating capacity, or in the case of a Government servant who held a post mentioned in sub-rule (2) the Government certifies that he

would have continued to officiate in or hold the post concerned;

- (ii) earned leave not exceeding one hundred and twenty days, or the first one hundred and twenty days of earned leave exceeding one hundred and twenty days, or leave on average pay not exceeding four months or the first four months of leave on average pay exceeding four months for the purpose of calculating service for additional pension, taken by a Government servant during his service in a post mentioned in sub-rules (1) and (2) or during the period of duty covered by clause (i), if, in the case of a Government servant who has held post mentioned in the said clause in an officiating capacity or a post mentioned in sub-rule (2), the Government certifies that he would, if he had not proceeded on leave, have continued to officiate in the post mentioned in sub-rule (1), or have held a post mentioned in sub-rule (2).

(4) Government servant, who, under the second proviso to sub-rule (1) of rule 30 of these rules, or under rule 113 of the Fundamental Rules has received officiating promotion to one of the posts listed in the said Schedule, or in whose case the Government certifies that he would have received such promotion had he not been on special duty or held a temporary post, may be granted an additional pension at the rates and subject to the condition specified in sub-rule (1), as though he had held, during the period for which he officiates or would have officiated, a post listed in the said Schedule.

Explanation.—In calculating under this sub-rule any service for the purpose of granting additional pension, the period of officiating promotion, including any earned leave, not exceeding one hundred and twenty days or the first one hundred and twenty days of earned leave exceeding one hundred and twenty days or leave on average pay not exceeding four months or the first four months of leave on average pay exceeding four months taken during the period if the Government certifies that, had the Government servant not been on leave, he would have continued in the same capacity, shall be taken into account.

(5) The grant of the additional pension is subject to the condition that the Government servant must in the event of voluntary retirement, have completed twenty-eight years of qualifying service.

Explanation.—The expression "voluntary retirement" shall be construed as retirement under rule 43.

(6) Service in a tenure appointment shall qualify for the grant of additional pension if the Government servant does not count pay in the tenure post as emoluments.

(7) The additional pension admissible under this rule shall not be given as a matter of course but only where the service rendered is approved as satisfying the standard of work and conduct required in special conditions of the post or duty referred to in this rule.

(8) The President may, by order sanction additional pension to a Government servant who at the time of retirement from service has held a post which is comparable to the post of a Joint Secretary or Deputy Secretary to the Government of India both in respect of pay and responsibilities and such a post has not been included in the said Schedule.

CHAPTER VII.—Regulation of Amounts of Pensions of Post-1938 Entrants

47. Scope.—The provisions of this Chapter shall apply to a Government servant:—

- (a) who on the 30th September, 1938 held a lien or a suspended lien on a permanent pensionable post under the Government or a Local

- Fund administered by the Government and did not opt for the provisions relating to pension and gratuity as specified in clause (b) or clause (c) of paragraph 2 of the Ministry of Finance Office, Memorandum No. 3(10)E(Spl)/50 dated the 2nd January, 1951, as amended by the Ministry of Finance Office Memorandum No. 3(16)-EST(Spl)/50, dated the 21st February, 1951, and
- (b) who entered Government service on or after the 1st October, 1938, or having entered service before that date did not hold a lien or a suspended lien on a permanent pensionable post before that date.

48. Retirement on completion of 30 years qualifying service.—(1) At any time after a Government servant has completed thirty years qualifying service,—

- (a) he may retire from service, or
 (b) he may be required by the appointing authority to retire in the public interest, and in the case of such retirement the Gov-

49. Amount of pension.—(1) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be the appropriate amount as set out below, namely:—

Completed six monthly periods of qualifying service	Scale of service gratuity
(1)	(2)
1	1/2 month's emoluments.
2	1 month's emoluments.
3	1 1/2 month's emoluments.
4	2 month's emoluments.
5	2 1/2 month's emoluments.
6	3 month's emoluments.
7	3 1/2 month's emoluments.
8	4 month's emoluments.
9	4 3/8 month's emoluments.
10	4 3/4 month's emoluments.
11	5 1/8 month's emoluments.
12	5 1/2 month's emoluments.
13	5 7/8 month's emoluments.
14	6 1/4 month's emoluments.
15	6 5/8 month's emoluments.
16	7 month's emoluments.
17	7 3/8 month's emoluments.
18	7 3/4 month's emoluments.
19	8 1/8 month's emoluments.

(2) In the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than ten years, the amount of pension shall be the appropriate amount as set out below, namely:—

Completed six monthly periods of qualifying service	Scale of pension	Maximum pension (in rupees per annum)
(1)	(2)	(3)
20	10/80ths of average emoluments.	2,700
21	10 1/80ths of average emoluments	2,835
22	11/80ths of average emoluments	2,970
23	11 1/80ths of average emoluments	3,105
24	12/80ths of average emoluments	3,240
25	12 1/80ths of average emoluments	3,375
26	13/80ths of average emoluments	3,510
27	13 1/80ths of average emoluments	3,645
28	14/80ths of average emoluments	3,780
29	14 1/80ths of average emoluments	4,050
30	15/80ths of average emoluments	4,050
31	15 1/80ths of average emoluments	4,185
32	16/80ths of average emoluments	4,320
33	16 1/80ths of average emoluments	4,455
34	17/80ths of average emoluments	4,590

(1)	(2)	(3)	
35 . 171/80ths	of average emoluments	4,725	
36 . 181/80ths	of average emoluments	4,860	
37 . 181/80ths	of average emoluments	4,995	
38 . 191/80ths	of average emoluments	5,130	
39 . 191/80ths	of average emoluments	5,265	
40 . 201/80ths	of average emoluments	5,400	
41 . 201/80ths	of average emoluments	5,535	
42 . 211/80ths	of average emoluments	5,670	
43 . 211/80ths	of average emoluments	5,805	
44 . 221/80ths	of average emoluments	5,940	
45 . 221/80ths	of average emoluments	6,075	
46 . 231/80ths	of average emoluments	6,210	
47 . 231/80ths	of average emoluments	6,345	
48 . 241/80ths	of average emoluments	6,480	
49 . 241/80ths	of average emoluments	6,615	
50 . 251/80ths	of average emoluments	6,750	
51 . 251/80ths	of average emoluments	6,885	
52 . 261/80ths	of average emoluments	7,020	
53 . 261/80ths	of average emoluments	7,155	
54 . 271/80ths	of average emoluments	7,290	
55 . 271/80ths	of average emoluments	7,425	
56 . 281/80ths	of average emoluments	7,560	
57 . 281/80ths	of average emoluments	7,695	
58 . 291/80ths	of average emoluments	7,830	
59 . 291/80ths	of average emoluments	7,965	
60 and above	301/80ths	of average emoluments	8,100

(3) In calculating the length of service, fractions of a year equal to six months and above shall be treated as a completed six monthly period.

(4) The amount of pension shall be fixed at monthly rates and be expressed in whole rupees and where the pension contains a fraction of a rupee it shall be rounded off to the next higher rupee:

Provided that in no case a pension in excess of the maximum pension prescribed under this rule shall be allowed.

(5) Where the amount of pension,—

- (a) calculated by taking into account dearness pay, or
- (b) calculated after excluding dearness pay, but inclusive of *ad hoc* increase sanctioned in the Ministry of Finance Office Memorandum No. F. 15(13)EV(A)/63, dated the 18th October, 1963, as amended from time to time,

is less than forty rupees per mensem, the difference shall be made good by the grant of further increase in pension.

(6) Nothing contained in sub-rule (5) shall apply to a military pensioner who on his re-employment in a civil service or post had elected to draw his military pension under clause (a) of sub-rule (1) of rule 18, if such a pensioner was allowed the benefit of minimum pension of forty rupees per mensem (including temporary increase or *ad hoc* increase or both) in respect of his military service:

Provided that where the amount of military pension (including *ad hoc* increase or temporary increase or both) is forty rupees per mensem or more, and his pension for civil service (including *ad hoc* increase, if any) falls below forty rupees per mensem, his civil pension shall be raised to forty rupees per mensem in accordance with the provisions of sub-rule (5).

50. Death-cum-retirement gratuity.—(1) (a) A Government servant, who has completed five years' qualifying service and has become eligible for service gratuity or pension under rule 49, shall, on his retirement, be granted death-cum-retirement gratuity equal to one-fourth of his emoluments for each completed six monthly period of qualifying service, subject to a maximum of 15 times the emoluments.

(b) If a Government servant dies while in service after completing five years' qualifying service, the amount of death-cum-retirement gratuity shall be equal to 12 times of his emoluments or the amount determined under clause (a), whichever is higher and it shall be paid to his family in the manner indicated in sub-rule (1) of rule 51:

Provided that the amount of death-cum-retirement gratuity payable under this rule shall, in no case, exceed twenty-four thousand rupees.

(2) If a Government servant, who has become eligible for a service gratuity or pension, dies within five years from the date of his retirement from service including compulsory retirements as a penalty and the sums actually received by him at the time of his death on account of such gratuity or pension including *ad hoc* increase, if any, together with the death-cum-retirement gratuity admissible under sub-rule (1) and the commuted value of any portion of pension commuted by him are less than the amount equal to 12 times of his emoluments, a residuary gratuity equal to the deficiency may be granted to his family in the manner indicated in sub-rule (1) of rule 51.

(3) (a) If a Government servant dies in the first year of qualifying service, a death-cum-retirement gratuity equal to two times of his emoluments at the time of his death shall be paid to his family in the manner indicated in sub-rule (1) of rule 51.

(b) If a Government servant dies after completion of one year of qualifying service but before completing five years of qualifying service, the amount of death-cum-retirement gratuity shall be equal to six times of his emoluments.

(4) (a) In the case of a Government servant to whom rule 54 applies, a contribution of an amount equal to two months emoluments, or three thousand and six hundred rupees, whichever is less, shall be recovered out of the death-cum-retirement gratuity.

Provided that where the average emoluments are treated as emoluments under sub-rule (5), the amount of contribution shall be determined with reference to such average emoluments.

(b) No such recovery shall be made out of the death-cum-retirement gratuity payable to a Government servant who retires before earning a pension, or who, at the time of death while in service or at the

time of retirement, was an unmarried Government servant a widower or a widow and had no child or children including legally adopted children.

(5) The emoluments for the purpose of gratuity admissible under this rule shall be subject to a maximum of one thousand eight hundred rupees per annum, and shall be reckoned in accordance with rule 33:

Provided that if the emoluments of a Government servant have been reduced during the last three years of his service otherwise than as penalty, average emoluments as referred to in rule 34 may, at the discretion of the pension sanctioning authority, be treated as emoluments.

(6) For the purposes of this rule and rules 51, 52 and 53, 'family' in relation to a Government servant, means:—

- (i) Wife or wives, in the case of a male Government servant,
- (ii) husband, in the case of a female Government servant,
- (iii) sons including step sons and adopted sons,
- (iv) unmarried daughters including step daughters and adopted daughters,
- (v) widowed daughters including step daughters and adopted daughters,
- (vi) father including adoptive parents in the case,
- (vii) mother of individuals whose personal law permits adoption,
- (viii) brothers below the age of eighteen years including step brothers,
- (ix) unmarried sisters and widowed sisters including step sisters,
- (x) married daughters, and
- (xi) children of a pre-deceased son.

51. Persons to whom gratuity is payable.—(1) (a) The gratuity payable under rule 50 shall be paid to the person or persons on whom the right to receive the gratuity is conferred by means of a nomination under rule 53;

(b) if there is no such nomination or if the nomination made does not subsist, the gratuity shall be paid in the manner indicated below:—

- (i) if there are one or more surviving members of the family as in clauses (i), (ii), (iii) and (iv) of sub-rule (6) of rule 50, to all such members in equal shares;
- (ii) if there are no such surviving members of the family as in sub-clause (i) above, but there are one or more members as in clauses (v), (vi), (vii), (viii), (ix), (x) and (xi) of sub-rule (6) of rule 50, to all such members in equal shares.

(2) If a Government servant dies after retirement without receiving the gratuity admissible under sub-rule (1) of rule 50 the gratuity shall be disbursed to the family in the manner indicated in sub-rule (1).

(3) The right of a female member of the family, or that of a brother, of a Government servant who dies while in service or after retirement, to receive the share of gratuity shall not be affected if the female member marries or re-marries, or the brother attains the age of eighteen years, after the death of the Government servant and before receiving her or his share of the gratuity.

(4) Where gratuity is granted under rule 50 to a minor member of the family of the deceased Government servant, it shall be payable to the guardian on behalf of the minor.

52. Lapse of death-cum-retirement gratuity.—Where a Government servant dies while in service, or after

retirement without receiving the amount of gratuity, and—

- (a) leaves behind no family; or
- (b) has made no nomination; or
- (c) the nomination made by him does not subsist; the amount of death-cum-retirement gratuity payable to him under rule 50 shall lapse to the Government.

53. Nominations.—(1) A Government servant shall on his initial confirmation in a service or post, make a nomination in Form 1 or Form 2, as may be appropriate in the circumstances of the case, conferring on one or more persons the right to receive the death-cum-retirement gratuity payable under rule 50:

Provided that if at the time of making the nomination—

- (i) the Government servant has a family, the nomination shall not be in favour of any person or persons other than the members of his family; or
- (ii) the Government servant has no family, the nomination may be made in favour of a person or persons, or a body of individuals, whether incorporated or not.

(2) If a Government servant nominates more than one person under sub-rule (1), he shall specify in the nomination the amount of share payable to each of the nominees in such manner as to cover the entire amount of gratuity.

(3) A Government servant may provide in the nomination—

- (i) that in respect of any specified nominee who pre-deceases the Government servant, or who dies after the death of the Government servant but before receiving the payment of gratuity, the right conferred on that nominee shall be pass to such other person as may be specified in the nomination:

Provided that if at the time of making the nomination the Government servant has a family consisting of more than one member, the person so specified shall not be a person other than a member of his family:

Provided further that where a Government servant has only one member in his family, and a nomination has been made in his favour, it is open to the Government servant to nominate alternate nominee or nominees in favour of any person or a body of individuals, whether incorporated or not;

- (ii) that the nomination shall become invalid in the event of the happening of the contingency provided therein.

(4) The nomination made by a Government servant who has no family at the time of making it, or the nomination made by a Government servant, under the second proviso to clause (i) of sub-rule (3) where he has only one member in his family shall become invalid in the event of the Government servant subsequently acquiring a family, or an additional member in the family, as the case may be.

(5) A Government servant may, at any time, cancel a nomination by sending a notice in writing to the authority mentioned in sub-rule (7):

Provided that he shall, along with such notice, send a fresh nomination made in accordance with this rule.

(6) Immediately on the death of a nominee in respect of whom no special provision has been made in the nomination under clause (i) of sub-rule (3) or on the occurrence of any event by reason of which the nomination becomes invalid in pursuance of clause (ii) of that sub-rule, the Government servant shall send to the authority mentioned in sub-rule (7) a notice in writing cancelling the nomination together

with a fresh nomination made in accordance with this rule.

(7) (a) Every nomination made (including every notice of cancellation, if any, given) by a Government servant under this rule, shall be sent,

- (i) in case the Government servant is a permanent gazetted Government servant other than a gazetted Government servant referred to in sub-rule (1) of rule 59 to the Audit Officer concerned; and
- (ii) in any other case, including that of a gazetted Government servant referred to in sub-rule (1) of rule 59, to the Head of Office.

(b) The Audit Officer or the Head of Office, as the case may be, shall, immediately on receipt of the nomination referred to in clause (a), countersign it indicating the date of receipt and keep it under his custody.

(c) (i) The Head of Office may authorise his subordinate gazetted officers to countersign the nomination forms of non-gazetted Government Servants.

(ii) Suitable entry regarding receipt of nomination shall be made in the service book of the non-gazetted Government servant.

(8) Every nomination made, and every notice of cancellation given, by a Government servant shall, to

Pay of Government Servant

- (i) Rs. 800 and above.
- (ii) Rs. 200 and above but below Rs. 800/-
- (iii) Below Rs. 200/-

(3) (a) Subject to the provisions of sub-rule (5), where a Government servant, who is not governed by the Workmen's Compensation Act, 1923 (8 of 1923), dies while in service after having rendered not less than seven years continuous service, the rate of family pension payable to the family shall be equal to 50 per cent of the pay last drawn or twice the family pension admissible under sub-rule (2), whichever is less, and the amount so admissible shall be payable from the date following the date of death of the Government servant—

- (i) for a period of seven years; or
- (ii) till the date on which the Government servant would have reached the age of superannuation had he remained alive; or
- (iii) in case he had been on extension of service till the date upto which the extension had been granted,

whichever period is shorter.

(b) (i) Where a Government servant, who is governed by the Workmen's Compensation Act, 1923 (8 of 1923), dies while in service after having rendered not less than seven years continuous service, the rate of family pension payable to the family shall be equal to 50 per cent of the pay last drawn or one and a half times the family pension admissible under sub-rule (2), whichever is less.

(ii) The family pension so determined under sub-clause (i) shall be payable for the period mentioned in clause (a):

Provided that where a compensation is not payable under the aforesaid Act, the pension sanctioning authority shall send a certificate to the Audit Officer to the effect that the family of the deceased Government servant is not eligible for any compensation under the aforesaid Act and the family shall be paid family pension on the scale, and for the period mentioned in clause (a).

the extent that it is valid, take effect from the date on which it is received by the authority mentioned in sub rule (7).

5. **Contributory family pension.**—(1) The provisions of this rule shall apply—

- (a) to a Government servant entering service in a pensionable establishment on or after the 1st January, 1964; and
- (b) to a Government servant who was in service on the 31st December, 1963 and came to be governed by the provisions of the Family Pension Scheme for Central Government employees, 1964, contained in the Ministry of Finance Office Memorandum No. 9(16)-EV(A)/63, dated the 31st December, 1963, as in force immediately before the commencement of these rules.

(2) Subject to the provisions of sub-rule (5) and without prejudice to the provisions contained in sub-rule (3), where a Government servant dies:—

- (a) after completion of not less than one year continuous service, or
- (b) after retirement from service and was in receipt of pension on the date of death,

the family of the deceased shall be entitled to a contributory family pension (hereinafter in this rule referred to as family pension) the amount of which shall be determined as follows:—

Amount of monthly family pension

12 per cent of pay subject to a maximum of Rs. 150/-
15 per cent of pay subject to a maximum of Rs. 96/- and a minimum of Rs. 60/-.

30 per cent of pay subject to a minimum of Rs. 40/-.

(c) After the expiry of the period referred to in clause (a), the family, in receipt of family pension under that clause or clause (b), shall be entitled to family pension at the rate admissible under sub-rule (2).

(4) (a) (i) Where an award under the Central Civil Services (Extraordinary Pension) Rules is admissible, no family pension under this rule shall be sanctioned except in a case where a Government servant dies, as a result of 'risk of office' or 'special risk or onice', as defined in the aforesaid Rules, after having rendered continuous service of not less than seven years.

(ii) The family of such Government servant shall be sanctioned family pension on the scale, and for the period, mentioned in clause (a) of sub-rule (3) and on the expiry of that period award under the Central Civil Services (Extraordinary Pension) Rules shall become payable.

(b) Where a family pension under clause (a) has been sanctioned to a widow or widower, nothing contained in that clause shall be construed as preventing the child or children, if any, from drawing pension under the Central Civil Services (Extraordinary Pension) Rules.

(c) Where a Government servant referred to in clause (a) dies after having rendered not less than one year continuous service, but before completion of seven years continuous service, and is not survived by a widow or widower, but is survived only by child or children, such child or children shall be sanctioned family pension as admissible under sub-rule (2) if such pension is higher than the award under the Central Civil Services (Extraordinary Pension) Rules.

(d) The grant of family pension under sub-rule (2) or sub-rule (3) shall be subject to the payment of contribution under sub-rule (4) of rule 50 or under

any order issued by the Government and nothing contained in this sub-rule shall apply to the grant of family pension under sub-rule (4).

(6) The period for which family pension is payable shall be as follows:—

- (i) in the case of a widow or widower, up to the date of death or remarriage, whichever is earlier;
- (ii) in the case of a son, until he attains the age of eighteen years, and
- (iii) in the case of an unmarried daughter, until she attains the age of twenty-one years or until she gets married, whichever is earlier.

(7) (a) (i) Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares.

(ii) On the death of a widow, her share of the family pension shall become payable to her eligible child:

Provided that if the widow is not survived by any child, her share of the family pension shall cease to be payable.

(b) Where the deceased Government or pensioner is survived by a widow but has left behind eligible child or children from another wife who is not alive, the eligible child or children shall be entitled to the share of family pension which the mother would have received if she had been alive at the time of the death of the Government servant or pensioner.

(8) (i) Except as provided in sub-rule (7), the family pension shall not be payable to more than one member of the family at the same time.

(ii) If a deceased Government servant or pensioner leaves behind a widow or widower, the family pension shall become payable to the widow or widower, failing which to the eligible child.

(iii) If sons and unmarried daughters are alive, unmarried daughters shall not be eligible for family pension unless the sons attain the age of eighteen years, and thereby become ineligible for the grant of family pension.

(9) Where a deceased Government servant or pensioner leaves behind more children than one the eldest eligible child shall be entitled to the family pension for the period mentioned in clause (ii) or clause (iii) of sub-rule (6), as the case may be, and after the expiry of that period the next child shall become eligible for the grant of family pension.

(10) Where family pension is granted under this rule to a minor, it shall be payable to the guardian on behalf of the minor.

(11) In case both wife and husband are Government servants and are governed by the provisions of this rule and one of them dies while in service or after retirement, the family pension in respect of the deceased shall become payable to the surviving husband or wife and in the event of the death of the husband or wife, the surviving child or children shall be granted the two family pensions in respect of the deceased parents, subject to the limits specified below, namely:—

(a) (i) if the surviving child or children is or are eligible to draw two family pensions at the rate mentioned in sub-rule (3), the amount of both the pensions shall be limited to three hundred rupees per mensem;

(ii) if one of the family pensions ceases to be payable at the rate mentioned in sub-rule (3), and in lieu thereof the pension at the rate mentioned in sub-rule (2) becomes payable, the amount of both the pensions shall also be limited to three hundred rupees per mensem;

(b) if both the family pension are payable at the rates mentioned in sub-rule (2), the amount of two pensions shall be limited to one hundred and fifty rupees per mensem.

(12) (a) (i) As soon as a Government servant has completed one year's continuous service, he shall give details of his family in Form 3 to the Audit Officer, if he is a gazetted Government servant other than a gazetted Government servant referred to in sub-rule (1) of rule 59, or to the Head of Office, if he is a non-gazetted Government servant or a gazetted Government servant referred to in sub-rule (1) of rule 59:

Provided that a Government servant holding a lien or a suspended lien on a non-gazetted service or post and holding a gazetted service or post in a temporary or officiating capacity shall furnish the details of his family in Form 3 to the Head of Office;

(ii) If the Government servant has no family, he shall furnish the details in Form 3 as soon as he acquires a family.

(b) The Government servant shall communicate to the Audit Officer or the Head of Office, as the case may be, any subsequent change in the size of his family, including the fact of marriage of his female child.

(c) The Audit Officer shall on receipt of the said Form 3, keep it in safe custody and acknowledge receipt of the said Form 3 and all further communications received from the Government servant in this behalf.

(d) The Head of Office shall, on receipt of the said Form 3, paste it in the service book of the Government servant concerned and acknowledge receipt of the said Form 3 and all further communications received from the Government servant in this behalf.

(e) The Audit Officer or the Head of Office, as the case may be, on receipt of communication from the Government servant regarding any change in the size of family shall incorporate such a change in Form 3.

(13) The ad hoc increase in pension, sanctioned in the Ministry of Finance Office Memorandum No. 15(13)-EV(A)/63, dated the 16th October, 1963, as amended from time to time, shall not be payable to the family in receipt of a family pension under this rule.

(14) For the purposes of this rule,—

(a) "continuous service" means service rendered in a temporary or permanent capacity in a pensionable establishment and does not include—

- (i) period of suspension, if any, and
- (ii) period of service, if any, rendered before attaining the age of eighteen years;

(b) "family", in relation to a Government servant means—

(i) wife in the case of a male Government servant, or husband in the case of a female Government servant, provided the marriage took place before retirement of the Government servant;

NOTE 1:—Wife and husband shall include respectively judicially separated wife and husband.

NOTE 2:—Where the appointing authority referred to in sub-rule (3) of rule 6 decides that for reasons to be recorded in writing, a child or children from a judicially separated deceased female Government servant should receive the family pension in preference to judicially separated husband of the deceased Government servant, such husband shall not be regarded as covered

by the expression 'family'.

- (ii) son who has not attained the age of eighteen years and unmarried daughter who has not attained the age of twenty-one years, including such son and daughter adopted legally before retirement;
- (c) "pay" means the emoluments as specified in rule 33.

(15) Nothing contained in this rule shall apply to—

- (a) a re-employed Government servant who had retired before the 1st January, 1964, from—
 - (i) civil service on retiring pension or superannuation pension, or
 - (ii) military service on retiring pension, service pension or invalid pension, and who, on the date of re-employment, had attained the age of superannuation applicable to the post in which he is re-employed;
- (b) a military pensioner who has retired from military service on or after the 1st January, 1964, or retires from such service after the commencement of these rules, on retiring pension, service pension or invalid pension and is re-employed in a civil service or post before attaining the age of superannuation:

Provided that for the grant of ordinary family pension such Government servant is governed by Army Instruction 2/5/64, as amended from time to time, or corresponding Navy or Air Force Instruction.

- (c) a Government servant who, on absorption in a service or post in or under a corporation or company wholly or substantially owned or controlled by the Government or any other body, incorporated or not, is sanctioned pension under rule 37.

55. Non-contributory family pension.—(1) The provisions of this rule shall apply to a Government servant who was in service on the 31st December, 1963 and had specifically opted for the scheme of family pension (hereinafter in this rule referred to as non-contributory family pension) admissible under the Ministry of Finance Office Memorandum No. F.3(1)E (Spl.)/47, dated 17th April, 1950, as in force immediately before the commencement of these rules.

(2) A non-contributory family pension shall be granted for a period not exceeding ten years to the family of a Government servant who dies while in service after completion of not less than twenty years qualifying service:

Provided that the Government may, in exceptional circumstances grant such pension to the family of a Government servant who dies while in service after completion of not less than ten years qualifying service:

Provided further that the period of payment shall, in no case, extend beyond a period of five years from the date on which the Government servant would have retired in the normal course on superannuation pension.

Explanation.—Where a Government servant dies while on extension of service, the date up to which extension of service had been granted to him before his death shall be construed as the date on which the Government servant would have retired on superannuation pension.

(3) A Government servant who, at the time of his retirement, including compulsory retirement as a penalty, had rendered qualifying service of not less than twenty years and dies within five years of the

date of his retirement, a non-contributory family pension shall be granted to his family for the unexpired portion of five years from the date of his retirement.

(4) (a) The amount of non-contributory family pension payable under sub-rule (2) shall be one half of the superannuation pension which would have been admissible to the Government servant had he retired on the date following the date of his death.

(b) The amount of non-contributory family pension payable under sub-rule (3) shall be one-half of the pension sanctioned to the Government servant at the time of his retirement and if the pensioner had, before his death, commuted a part of his pension, the commuted part of the pension shall be deducted from the amount of non-contributory family pension:

Provided that the amount of non-contributory family pension payable under clause (a) or clause (b) shall be subject to a maximum of one hundred and fifty rupees per month and a minimum of forty rupees per month;

Provided further that where the amount of non-contributory family pension (calculated after taking into account, the *ad hoc* increase, if admissible, sanctioned in the Ministry of Finance Office Memorandum No. 15(3)FV(A)/63, dated the 16th October, 1963, as amended from time to time) is less than forty rupees per month, the difference shall be made good by the grant of further increase in the amount of non-contributory family pension.

(5) No non-contributory family pension shall be payable under this rule—

- (a) to a person mentioned in clause (b) of sub-rule (6), without production of reasonable proof that such person was dependent on the deceased Government servant for support;
- (b) to an unmarried female member of a Government servant's family, in the event of her marriage;
- (c) to a widowed female member of a Government servant's family, in the event of her re-marriage, and
- (d) to a brother of a Government servant, on his attaining the age of eighteen years.

(6) (a) Except as may be provided by nomination under sub-rule (7) the non-contributory family pension sanctioned under this rule shall be payable,—

- (i) to the widow, and if there are more widows than one, to the eldest surviving widow, if the deceased was a male Government servant, or to the husband, if the deceased was a female Government servant.

Explanation.—The expression "eldest surviving widow" shall be construed with reference to the seniority according to the date of the marriages of the surviving widows and not with reference to their age;

- (ii) failing a widow or husband, as the case may be, to the eldest surviving son;
- (iii) failing (i) and (ii) above, to the oldest surviving unmarried daughter;
- (iv) failing the above, to the eldest surviving widowed daughter.

(b) If there are no surviving members of the family as in clause (a), the non-contributory family pension may be granted:

- (i) to the father;
- (ii) failing (i) above, to the mother;
- (iii) failing (i) and (ii) above, to the eldest surviving brother below the age of eighteen years;

- (iv) failing (i), (ii) and (iii) above, to the eldest surviving unmarried sister;
- (v) failing the above, to the eldest surviving widowed sister.

(7) (a) A Government servant shall on his confirmation in a service or post, make a nomination in Form 4 indicating the order in which a non-contributory family pension should be paid to the members of his family and, to the extent it is valid, the non-contributory family pension shall be payable in accordance with such nomination:

Provided that the persons concerned satisfy the requirements of sub-rule (5) on the date from which such non-contributory pension may fall due.

(b) In case the person concerned does not satisfy the requirements of sub-rule (5), the non-contributory family pension shall be granted to the person next lower in the order shown in the nomination.

(c) The provisions of sub-rules (5), (7) and (8) of rule 53 shall apply in respect of nominations made under this sub-rule.

(8) (a) A non-contributory family pension granted under this rule shall not be payable to more than one member of a Government servant's family at the same time.

(b) If the non-contributory family pension granted under this rule ceases to be payable on account of death or marriage of the recipient or other causes, it shall be regranted to the person next lower in the order mentioned in sub-rule (6) or to the person next lower in the order shown in the nomination made under sub-rule (7), as the case may be, who satisfies the other provisions of this rule.

(9) A non-contributory family pension sanctioned under this rule shall be tenable in addition to any extra-ordinary pension or gratuity or compensation that may be granted to the members of a Government servant's family.

(10) Where non-contributory family pension is granted under this rule to a minor member of the family of the deceased Government servant, it shall be payable to the guardian on behalf of the minor.

(11) For the purposes of this rule, the expression 'family' in relation to a Government servant means, the family as defined in clauses (i) to (viii) of sub-rule (6) of rule 50.

(12) Nothing contained in this rule shall apply to a Government servant who, on absorption in a service or post in or under a corporation or company wholly or substantially owned or controlled by the Government, or any other body, incorporated or not, is sanctioned pension under rule 37.

CHAPTER VIII.—Application for and Sanction of Pensions

GENERAL

56. Preparation of list of Government servants due for retirement.—(1) Every Head of the Department shall have a list prepared every six months, that is, on the 1st January and the 1st July each year of all gazetted and non-gazetted Government servants who are due to retire within the next 12 to 18 months of that date.

(2) A copy of every list referred to in sub-rule (1) shall be supplied to the Audit Officer concerned not later than the 31st January or the 31st July, as the case may be, of that year.

(3) In the case of a Government servant retiring for reasons other than by way of superannuation, the Head

of the Department shall promptly inform the Audit Officer as soon as the impending retirement becomes known to him.

57. Intimation to Directorate of Estates regarding issue of 'No Demand Certificate'.—The Head of the Department or the Head of Office shall write to the Directorate of Estates at least one year before the anticipated date of retirement of a Government servant who is in occupation of a Government accommodation, for issue of 'No Demand Certificate' so that the sanction of pension and gratuity is not delayed and the necessary Government dues are realised within the period specified in sub-rule (3) of rule 76.

58. Submission of application for pension.—(1) Every Government servant shall submit in writing an application for pension in Form 5:

Provided that a Gazetted Government servant shall send his application direct to the Audit Officer and a non-gazetted Government servant to the Head of Office.

(2) Every Government servant shall submit his application for pension at least one year in advance of the date of his anticipated retirement:

Provided that,—

(i) in a case in which the date of retirement cannot be foreseen one year in advance, the application shall be submitted immediately after the date of retirement is settled; and

(ii) a Government servant, proceeding on leave preparatory to retirement in excess of one year, shall submit the application at the time of proceeding on such leave.

59. Gazetted Government servants drawing pay on establishment bills and other Government servants holding gazetted posts in officiating capacity.—(1) A gazetted Government servant whose pay and allowances are drawn by the Head of Office on establishment bills shall be treated as a non-gazetted Government servant. Such Government servant shall submit his application for pension to the Head of Office and the procedure laid down in rules 66 to 74 (both inclusive) shall apply to him.

(2) In the case of a Government servant holding a lien or a suspended lien on a non-gazetted post and holding a gazetted post in a temporary or officiating capacity at the time of retirement and whose pay and allowances are not drawn by the Head of Office on establishment bills, the Head of Office shall send the service book of the Government servant concerned to the Audit Officer at least one year in advance of the date of retirement of such Government servant or as soon as possible if such Government servant is promoted to officiate in a Gazetted post only during the last year of his service, after verifying that the certificate of verification relating to non-gazetted service has been recorded and that the service book is complete in all respects.

60. Authority competent to sanction pension.—(1) (a) The Head of the Department or any other authority competent to make appointment to the post substantially held by the retiring Government servant shall be competent to sanction pension and gratuity.

(b) The authority referred to in clause (a) shall, after considering the facts of the case and having due regard to the provisions of rule 6, record in Form 6 his orders as to whether the service rendered by the Government servant has been satisfactory and is approved for the grant of full pension or gratuity or both, admissible under the rules or whether the service so rendered has not been thoroughly satisfactory and what reduction should, for that reason, be made from the full pension or gratuity or both.

(2) Notwithstanding anything contained in sub-rule (1), the Comptroller and Auditor-General shall be the

pension sanctioning authority in respect of officers of the Indian Audit and Accounts Service.

61. Revision of pension after sanction.—(1) Subject to the provisions of rules 8 and 9, pension once sanctioned after final assessment shall not be revised to the disadvantage of the Government servant, unless such revision becomes necessary on account of a clerical error subsequently:

Provided that no revision of pension to the disadvantage of the pensioner shall be ordered by the pension sanctioning authority without the sanction of the Ministry of Finance if the clerical error is detected after a period of two years from the date of sanction of pension.

(2) For the purposes of sub-rule (1), the Government servant concerned shall be served with a notice by the pension sanctioning authority, requiring him to refund the excess payments of pensions within a period of two months from the date of receipt of notice by him.

(3) In case the Government servant fails to comply with the notice, the pension sanctioning authority shall, by order in writing, direct that such excess payment shall be adjusted by short payments of pension in future, in one or more instalments, as the said authority may direct.

GAZETTED GOVERNMENT SERVANTS

62. Preparation of pension papers.—The Audit Officer concerned shall undertake the work of preparing pension papers in Form 7 one year before the date on which a Government servant is due to retire on superannuation, or on the date on which he proceeds on leave preparatory to retirement, whichever is earlier. This work shall not be delayed till the Government servant has actually submitted his application for pension.

Explanation.—In this rule and in rules 63, 64 and 65, the expression "Government servant" means a gazetted Government servant other than a gazetted Government servant referred to in sub-rule (1) of rule 59.

63. Further action to sanction pension.—(1) (a) The Audit Officer concerned shall send to every Government servant, under intimation to the Head of the Department, or where the retiring Government servant is himself the Head of the Department to the Ministry concerned, the application for pension in Form 5 one year in advance of the date on which the Government servant attains the age of superannuation or before the date of his anticipated retirement, if earlier, with the request that it should be returned to him duly completed within a period of three months from the date of issue of intimation to the Government servant by him but in no case later than the actual date of retirement.

(b) The Audit Officer shall also draw the attention of the retiring Government servant to the provisions of rule 83.

(2) On receipt of a copy of application for pension from the Audit Officer, the retiring Government servant shall return it duly completed to the Audit Officer within the period mentioned in sub-rule (1) under intimation to the Head of the Department or the Ministry if he is himself the Head of the Department.

(3) (a) The Head of the Department or the Ministry shall communicate the orders of the pension sanctioning authority to the Audit Officer in Form 6 within a period of three months from the date of receipt of the intimation referred to in sub-rule (1) but in no case later than the date of retirement of the Government servant.

(b) If the orders of the pension sanctioning authority are not received by the Audit Officer within the period mentioned in clause (a), he shall assume that

the retiring Government servant has been allowed full pension or gratuity or both as admissible under the rules.

(c) If, after the communication of the order of sanction to the Audit Officer, any event occurs which has a bearing on the amount of pension admissible, the fact shall be promptly reported to the Audit Officer by the pension sanctioning authority.

(d) In case no such event has occurred, a report to that effect together with a certificate as to the satisfactory nature of the service rendered by the Government servant after the despatch of Form 6 mentioned in clause (a) shall be forwarded to the Audit Officer within a week of the date on which the Government servant retires.

(4) The Head of Office shall furnish to the Audit Officer, at least fourteen days before the date of retirement of the Government servant, the following particulars, namely:

(a) Government dues recoverable out of the gratuity before payment is authorised, that is to say,—

(i) contribution towards contributory family pension, if applicable;

(ii) Government dues which have been ascertained and assessed;

(b) amount of gratuity to be held over for adjustment of Government dues which have not been assessed so far:

Provided that the Audit Officer shall not be required to withhold an amount of gratuity for adjustment of Government dues which have not been assessed, if under rule 76 the Government servant has made a cash deposit or furnished a surety of a permanent Government servant.

(5) When the Government servant has retired from service, a notification in the Official Gazette specifying the actual date of his retirement shall be issued within a week of such date and a copy of every such notification shall be forwarded immediately to the Audit Officer:

Provided that were a notification in the Official Gazette regarding the grant of leave preparatory to retirement to a Government servant is issued, a further notification that the Government servant actually retired on the expiry of such leave is curtailed and the retirement is for any reason ante-dated or postponed.

(6) The Audit Officer shall finally assess the pension and gratuity if the pension is payable in his circle of audit, he shall, after taking into account the order of the pension sanctioning authority and the audit enforcement on Section I of Part III of Form 7 and the dues mentioned in sub-rule (4), prepare the Pension Payment Order and order for the payment of gratuity.

Provided that the Pension Payment Order and order for the payment of gratuity shall not be issued more than a fortnight in advance of the date on which the Government servant is due to retire.

(7) If the pension is payable in another circle of audit, the Audit Officer shall send the necessary payment authority to the Audit Officer of that circle who shall arrange payment at the Treasury concerned.

(8) The fact of the issue of the Pension Payment Order and order for the payment of gratuity shall be promptly reported to the pension sanctioning authority.

64. Sanction of anticipatory pension and gratuity.—(1) When a Government servant is likely to retire before his pension or gratuity or both can be finally assessed and settled in accordance with the provision

of these rules, the Audit Officer shall determine the pension or gratuity or both to which, after the most careful summary investigation that he can make without delay, he believes the Government servant to be entitled. He shall then authorise the disbursement of the pension so determined as 'anticipatory pension' and of three-fourths of the amount of gratuity so determined as 'anticipatory gratuity' after deducting therefrom the dues mentioned in sub-rule (4) of rule 63. If the pension is payable in England, he shall report the amount payable to the High Commissioner for India in the United Kingdom who will authorise the disbursement of the amount reported or such smaller amount as may be deemed proper.

(2) The amount payable under sub-rule (1) shall be subject to revision on the completion of the detailed investigation and inquiries, if any.

(3) If the amount of pension granted to a Government servant under sub-rule (1) is afterwards found to be in excess of that to which he is entitled under these rules, he shall be called upon to refund such excess in the manner and under the conditions specified in rule 61. If, however, the amount of gratuity so disbursed proves to be larger than the amount finally assessed, the gratuitant shall not be required to refund the excess actually disbursed to him.

65. Provisional pension where departmental or judicial proceedings may be pending.—(1) (a) In respect of a Government servant referred to in sub-rule (4) of rule 9, the Audit Officer shall authorise the payment of provisional pension not exceeding the maximum pension which would have been admissible on the basis of the qualifying service upto the date of retirement of the Government servant, or if he was under suspension on the date of retirement, upto the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorised by the Audit Officer during the period commencing from the date of retirement to the date on which, upon conclusion of the departmental or judicial proceedings, final orders are passed by the competent authority.

(c) No gratuity shall be authorised to the Government servant until the conclusion of such proceedings and issue of final orders theron.

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

(3) Nothing contained in this rule shall prejudice the operation of rule 6 when final pension is sanctioned upon the conclusion of the departmental or judicial proceedings.

NON-GAZETTED GOVERNMENT SERVANTS

66. Preparation of pension papers.—(1) Every Head of Office shall undertake the work of preparing pension papers in Form 7 one year before the date on which a Government servant is due to retire on superannuation or on the date on which he proceeds on leave preparatory to retirement whichever is earlier. This work shall not be delayed till the Government servant has actually submitted his application in writing for pension in Form 5.

(2) (a) The Head of Office shall send to every Government servant the application for pension in Form 5 one year in advance of the date on which the Government servant attains the age of superannuation, or before the date of his anticipated retirement if earlier with the request that it should be returned to him duly completed within a period of three months from

the date of issue of intimation to the Government servant by him but in no case later than the actual date of retirement.

(b) The Head of Office shall also draw attention of the retiring Government servant to the provisions of rule 83.

Explanation.—In this rule and in rules 67 to 74 (both inclusive), the expression "Government servant" means a non-gazetted Government servant including a gazetted Government servant referred to in sub-rule (1) of rule 59.

67. Verification of service.—(1) The Head of Office shall prepare in Section I of Part II of Form 7 a statement of the Government servant's service.

(2) (a) The Head of Office shall go through the service book and the service roll, if any, of the Government servant and satisfy himself as to whether the annual certificates of verification for the entire service are recorded therein.

(b) In respect of the unverified portion or portions of service, he shall arrange to verify it or them, as the case may be, with reference to pay bills, acquittance rolls or other relevant records and record necessary certificates in the service book or service rolls, as the case may be.

(3) If the service for any period is not capable of being verified in the manner specified in sub-rule (2), that period of service having been rendered by the Government servant in another Office or Department, a reference shall be made to the Head of that Office or, as the case may be, Head of that Department in which the Government servant is shown to have served during that period for the purpose of verification.

(4) (a) If any portion of service rendered by a Government servant is not capable of being verified in the manner specified in sub-rule (2) or sub-rule (3), the Government servant shall file a written statement on plain paper stating that he had in fact rendered that period of service, and shall, at the foot of the statement, make and subscribe to a declaration as to the truth of that statement, and shall, in support of such declaration, produce all documentary evidence and furnish all information which is in his power to produce or furnish.

(b) The authority competent to sanction pension to that Government servant shall, after taking into consideration the facts in the written statement and the evidence produced and the information furnished by that Government servant in support of the said period of service admit, if satisfied that portion of service as having been rendered for the purposes of calculating the pension of that Government servant.

68. Completion of pension papers.—(1) After completing the service statement mentioned in rule 67, the Head of Office shall complete Part I of Form 7, irrespective of the fact whether an application for pension has been received from the Government servant or not.

(2) If at the time of completing Part I of Form 7 the said application from the Government servant has not been received, the relevant columns in Part I of Form 7 shall be left unfilled and relevant entries made as soon as the said application is received.

69. Forwarding of pension papers to Audit Officer.—(1) (a) After complying with the requirements of rule 68 the Head of Office shall certify in Form 6 as to whether the character, conduct and past service of the Government servant are such as to entitle him to the favourable consideration of the pension sanctioning authority.

(b) The Head of Office shall also record in Form 8 his opinion as to whether the service claimed has been established and should be admitted or not.

(c) Where the Head of Office is not the pension sanctioning authority, he shall obtain the orders of such authority in Form 6.

(2) (a) After completing Form 6, the Head of Office shall send Forms 6 and 7 in original to the Audit Officer, with a covering letter in Form 8 along with the Government servant's service book and service roll, if any, duly completed up-to-date and any other documents relied upon for the verification of the service claimed, in such a manner that they can be conveniently consulted.

(b) The Head of Office shall retain one copy of each of the above Forms for his office record.

(3) Where payment is desired in another circle of audit, the Head of Office shall send in duplicate Forms 6 and 7 to the Audit Officer.

70. Intimation to Audit Officer regarding any event having a bearing on pension.—(1) If, after the pension papers have been forwarded to the Audit Officer, any event occurs which has a bearing on the amount of pension admissible, the fact shall be promptly reported to the Audit Officer by the pension sanctioning authority.

(2) Where the pension papers have been sent to the Audit Officer before the actual date of retirement of the Government servant, a certificate as to the satisfactory nature of service rendered by the Government servant for the period from the date of admitting the service by the pension sanctioning authority to the date of actual retirement together with a copy of the order specifying the date of actual retirement shall be forwarded to the Audit Officer within a week from the date of actual retirement of the Government servant.

(3) The Head of Office shall furnish to the Audit Officer, at least fourteen days before the date of retirement of the Government servant, the following particulars, namely:

(a) Government dues recoverable out of the gratuity before payment is authorised, that is to say,—

(i) contribution towards contributory family pension, if applicable;

(ii) Government dues which have been ascertained and assessed;

(b) amount of gratuity to be held over for adjustment of Government dues which have not been assessed so far:

Provided that the Head of Office shall not be required to withhold an amount of gratuity for adjustment of Government dues which have not been assessed, if under rule 76 the Government servant has made a cash deposit or furnished a surety of a permanent Government servant.

71. Sanction, drawal and disbursement of provisional pension and of gratuity.—(1) After the pension papers of a Government servant have been sent to the Audit Officer concerned, the Head of Office shall draw provisional pension not exceeding the maximum pension and three-fourths of the gratuity as indicated in Part I of Form 7 and for this purpose adopt the following procedure, namely:—

(a) he shall issue a sanction letter to the Government servant endorsing a copy thereof to the Audit Officer indicating the amount of provisional pension and three-fourths of the gratuity payable to such Government servant on retirement from service;

(b) he shall indicate in the sanction letter the amount recoverable out of the gratuity under sub-rule (3) of rule 70;

(c) after the issue of the sanction letter he shall draw,—

(i) the amount of provisional pension, and

(ii) the amount of three-fourths of the gratuity after deducting therefrom the dues mentioned in clause (b),

in Form TR-37-B appended to the Treasury Rules of the Central Government, from the Treasury at which the pay and allowances of the establishment are drawn by him;

(d) he shall obtain from such Government servant on retirement from service a certificate of non-employment as provided in rule 354 of the said Treasury Rules and append the same to the said Form TR-37B.

(2) The Head of Office shall take steps to draw and disburse the provisional pension and gratuity to the retired Government servant on the first day of the month following the month in which the Government servant retired from service.

(3) The payment of provisional pension shall continue for a period of six months from the date of retirement of the Government servant unless the period is extended by the Audit Officer under the proviso to sub-rule (1) of rule 73.

(4) The Head of Office shall inform the Audit Officer,—

(a) as soon as the gratuity has been paid to the retired Government servant, and

(b) as soon as the provisional pension has been paid to the retired Government servant for a period of six months or for the period extended under the proviso to sub-rule (1) of rule 73, as the case may be.

(5) If the pensioner desires the payment of provisional pension or of gratuity or of both through money order or bank draft, the same shall be remitted to him through money order or bank draft at his cost.

72. Drawal of balance of gratuity from Treasury or from Head of Office.—(1) It shall be open to the Government servant to receive the payment of the balance of the gratuity from the Treasury from which the payment of final pension is desired by him or from the Head of Office.

(2) Where a Government servant desires to receive the payment of balance of the gratuity from the Head of Office, he shall communicate his option in this behalf to the Head of Office in writing before the date of his retirement.

(3) The Head of Office shall thereupon take steps to draw and disburse the balance of the gratuity after the Audit Officer has issued the necessary authority as provided in sub-rule (4) of rule 73.

73. Authorisation of final pension and balance of gratuity by the Audit Officer.—(1) On receipt of the pension papers referred to in rule 69, the Audit Officer shall apply the requisite checks, record his audit enforcement on Section I of Part III of Form 7 and assess the amount of final pension and gratuity, within a period of six months from the date of retirement of the Government servant:

Provided that if the Audit Officer is, for any reason, unable to assess the amount aforesaid, he shall communicate the fact to the Head of Office under intimation to the Treasury Officer concerned and authorise the Head of Office to continue to disburse the provisional pension to the retired Government servant for such period as may be specified by the Audit Officer.

(2) (a) If the pension is payable in his circle of audit, the Audit Officer shall prepare the Pension Payment Order.

(b) The payment of pension shall be effective from the date following the date on which the payment of provisional pension ceased.

(c) Arrears of pension, if any, in respect of the period for which pension was drawn and disbursed by the Head of Office shall also be authorised by the Audit Officer.

(3) The Audit Officer shall authorise the payment of balance of the gratuity after adjusting the amount, if any, outstanding against the retired Government servant and if such balance is payable in his circle of audit, the Audit Officer shall prepare an order for its payment.

(4) If the Government servant has opted for receiving the payment of balance of the gratuity from the Head of Office, the Audit Officer shall issue the necessary authority in this behalf under intimation to the Government servant and the Treasury Officer indicating the amount, if any, which the Head of Office shall adjust before making payment to the Government servant.

(5) The fact of the issue of the Pension Payment Order and order for the payment of balance of the gratuity shall be promptly reported to the Head of Office and the pension papers which are no longer required shall be returned to him.

(6) The Audit Officer may authorise the payment of balance of the gratuity even during the period of the currency of provisional pension, provided the amount of gratuity has been finally assessed and no recovery of Government dues is outstanding against the Government servant.

(7) If the final pension and balance of the gratuity are payable in another circle of audit, the Audit Officer shall send a copy each of Form 6 and Form 7 along with his audit encashment and the last pay certificate, if received, to the Audit Officer of that circle who shall prepare the Pension Payment Order and order for the payment of balance of the gratuity:

Provided that the adjustment of provisional pension and gratuity drawn and disbursed by the Head of Office shall be made by the Audit Officer in whose circle the provisional payments were made.

(8) If the amount of provisional pension drawn and disbursed by the Head of Office is found to be in excess of the final pension assessed by the Audit Officer, it shall be open to the Audit Officer to adjust the excess amount out of the balance of the gratuity, if any, or recover the excess amount by short payments of pension payable in future.

(9) If the amount of gratuity disbursed by the Head of Office proves to be in excess of the amount finally assessed by the Audit Officer, the gratuity shall not be required to refund the excess.

74. Provisional pension where departmental or judicial proceeding may be pending.—(1) (a) In respect of a Government servant referred to in sub-rule (4) of rule 9, the Head of Office shall pay the provisional pension not exceeding the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement, up to the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be paid by the Head of Office for a period of six months unless the

period is extended by the Audit Officer under the proviso to sub-rule (1) of rule 73.

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

(3) Nothing contained in this rule shall prejudice the operation of rule 6 when final pension is sanctioned upon the conclusion of the departmental or judicial proceedings.

GOVERNMENT DUES

75. Recovery and adjustment of Government dues.—

(1) It shall be the duty of every retiring Government servant to clear all Government dues before the date of his retirement.

(2) Where a retiring Government servant does not clear the Government dues and such dues are ascertainable—

(a) an equivalent cash deposit may be taken from him, or

(b) out of the gratuity payable to him an amount equal to that recoverable on account of ascertainable Government dues shall be deducted therefrom.

Explanation.—The expression "ascertainable Government dues" includes balance of house building or conveyance advance, arrears of rent and other charges pertaining to occupation of Government accommodation, over-payment of pay and allowances and arrears of income-tax deductible at source under the Income-tax Act, 1961 (43 of 1961).

76. Furnishing of surety by retiring Government servant for.—(1) (a) If any of the Government dues (other than those referred to in rule 75) remain unrealised and unassessed for any reasons, the retiring Government servant may be asked to furnish in Form 9 a surety of a suitable permanent Government servant

(b) If the surety furnished by him is found acceptable, the grant of his pension and gratuity shall not be delayed.

(2) (a) If the retiring Government servant is unable or unwilling to furnish a surety, a suitable cash deposit may be taken from him, or, such portion of gratuity payable to him as may be considered sufficient may be held over till the outstanding dues are assessed and adjusted.

(b) The cash deposit to be taken or the amount of gratuity to be withheld shall not exceed the estimated amount of the outstanding dues plus twenty-five per cent thereof.

(c) Where it is not possible to estimate the approximate amount recoverable from the retiring Government servant the amount of deposit to be taken or the portion of gratuity to be withheld shall be limited to ten per cent of the amount of gratuity or one thousand rupees, whichever is less.

(3) (a) Effort shall be made to assess and adjust the recoverable Government dues within a period not exceeding six months from the date of retirement of the Government servant and, if no claim is made on

Government account against the Government servant within such a period it shall be presumed that no Government claim is outstanding against him.

Explanation.—In respect of dues pertaining to the occupation of Government accommodation by the Government servant, the period of six months shall reckon from the date of retirement, or from the date of complete vacanation of the Government accommodation, whichever is later.

(b) The Government dues as assessed shall be adjusted against the cash deposit or the amount withheld from the gratuity and the balance, if any, shall be released to the retired Government servant after the expiry of the period referred to in clause (a).

(c) Where a pensioner has furnished a surety, the surety shall be released after the expiry of the period referred to in clause (a) provided the dues assessed up to that time have been recovered.

(4) The Government dues which remain unrealised within the period referred to in clause (a) of sub-rule (3) and such other dues, the claim for which is received after that period, shall be recoverable from the retired Government servant.

CHAPTER IX.—Sanction of family pension and death-cum-retirement gratuity in respect of government servants dying while in service.

77. Payment of family pension and death-cum-retirement gratuity when a gazetted Government servant dies while in service.—(1) Where the Head of Office has received an intimation about the death of a gazetted Government servant while in service, he shall communicate the fact to the Audit Officer concerned.

Explanation:—For the purposes of this rule, 'gazetted Government servant' means:—

- (i) a Government servant who, before his death, had a lien or a suspended lien on a permanent pensionable service or post in a gazetted capacity but does not include a gazetted Government servant referred to in sub-rule (1) of rule 59; and
- (ii) a Government servant other than a Government servant referred to in sub-rule (1) of rule 59, who before his death held pensionable service or post in gazetted capacity but had not held a lien or a suspended lien on any permanent pensionable service or post.

(2) On receipt of the information communicated under sub-rule (1), the Audit Officer shall ascertain whether any death-cum-retirement gratuity or family pension or both is or are payable in respect of the deceased Government servant.

(3) (a) Where the family of the deceased Government servant is eligible for the death-cum-retirement gratuity under rule 50, the Audit Officer shall ascertain—

- (i) if the deceased Government servant had nominated any person or persons to receive the gratuity, and
- (ii) if the deceased Government servant had not made any nomination or the nomination made does not subsist, the person or persons to whom the gratuity may be payable.

(b) The Audit Officer shall then address the person concerned in Form 10 or Form 11, as may be appropriate, for making a claim in Form 12.

(4) Where the family of the deceased Government servant is eligible for the contributory family pension under rule 54,—

- (a) the Audit Officer shall address the widow or widower in Form 13 for making a claim in Form 14, and
- (b) where the deceased Government servant is survived only by child or children, the guardian of such child or children may submit a claim in Form 14 to the Audit Officer:

Provided that the guardian shall not be required to submit a claim in the said Form on behalf of the unmarried daughter if she has attained the age of eighteen years and such daughter may herself submit a claim in the said Form.

(5) (a) Where the family of the deceased Government servant is eligible for non-contributory family pension under rule 55, the Audit Officer shall ascertain—

- (i) if the deceased Government servant had nominated a member of his family to receive the payment of the non-contributory family pension; and
- (ii) where the deceased Government servant had not made any nomination or the nomination made does not subsist, the person to whom the non-contributory family pension may be payable.

(b) The Audit Officer shall then address the person concerned in Form 15 or Form 16, as may be appropriate, for making a claim in Form 17.

(6) (a) Notwithstanding anything contained in sub-rules (3) to (5), the Head of Office shall furnish to the Audit Officer the following particulars, namely:—

- (i) Government dues recoverable out of the gratuity before payment is authorised, that is to say,—
 - (A) contribution towards contributory family pension, if applicable;
 - (B) Government dues which have been ascertained and assessed;
- (ii) amount of gratuity to be held over for adjustment of Government dues which have not been assessed so far;
- (iii) the orders of the pension sanctioning authority in Part III of Form 18;
- (iv) such other particulars, including details of the family of the deceased Government servant for the purpose of obtaining claim, as the Audit Officer may require.

NOTE.—The amount of gratuity to be held over under sub-clause (ii) shall be determined in accordance with the provisions of clauses (b) and (c) of sub-rule (2) of rule 76.

(b) If the orders of the pension sanctioning authority are not received by the Audit Officer within a month of the date of death of the Government servant, he shall assume that full death-cum-retirement gratuity and non-contributory family pension, if applicable, have been sanctioned.

(7) On receipt of the claim or claims, the Audit Officer shall complete Form 18 and finally assess the amount of death-cum-retirement gratuity or family pension or both.

(8) If the family pension is payable in his circle of audit, the Audit Officer shall prepare the Pension Payment Order.

(8) (a) The Audit Officer shall authorise the payment of gratuity after adjusting the amount, if any, outstanding against the deceased Government servant.

(b) The amount of gratuity held over under sub-clause (ii) of clause (a) of sub-rule (6) shall be adjusted by the Audit Officer against the Government dues ascertained and assessed subsequently and the balance, if any, shall be released to the claimant or claimants after the expiry of the period referred to in clause (a) of sub-rule (3) of rule 76.

(c) If the gratuity is payable in his circle of audit, the Audit Officer shall prepare an order for its payment.

(10) If the family pension and gratuity are payable in another circle of audit, the Audit Officer shall send the necessary payment authority to the Audit Officer Pension Payment Order and order for the payment of gratuity.

(11) The fact of the issue of the Pension Payment Order and order for the payment of gratuity shall be promptly reported to the pension sanctioning authority.

78. Sanction of Anticipatory Gratuity and Family Pension.—(1) Where the amount of death-cum-retirement gratuity and family pension payable under rule 77 cannot be finally assessed and settled in accordance with the provisions of these rules within a reasonable time, the Audit Officer shall determine the gratuity and the family pension, which, after the most careful summary investigation that he can make without delay, he believes the claimant to be entitled. He shall, after complying with the provisions of sub-rules (9), (10) and (11) of rule 77, authorise the disbursement of the family pension so determined as 'anticipatory family pension' and three-fourths of the amount of the gratuity so determined as 'anticipatory gratuity'.

(2) The anticipatory family pension and gratuity authorised under sub-rule (1) shall be subject to revision on completion of detailed investigation and inquiries, if any.

(3) If the amount of anticipatory family pension granted is afterwards found to be in excess of the final family pension assessed by the Audit Officer, it shall be open to the Audit Officer to adjust the excess by short payment of family pension payable in future. If, however, the amount of gratuity disbursed proves to be larger than the amount finally assessed by the Audit Officer, the gratuitant shall not be required to refund the excess actually disbursed to him.

79. Payment of provisional family pension and death-cum-retirement gratuity when a non-gazetted Government servant dies while in service.—(1) Where the Head of Office has received an intimation about the death of a non-gazetted Government servant while in service, he shall ascertain whether any death-cum-retirement gratuity or family pension or both is or are payable in respect of the deceased Government servant.

Explanation.—For the purposes of this rule and rule 80 the expression 'non-gazetted Government servant' includes:—

- (i) a gazetted Government servant referred to in sub-rule (1) of rule 59, and
- (ii) a gazetted Government servant who before his death did not hold a lien or a suspended lien on a permanent pensionable service or post in a gazetted capacity but held a lien or

a suspended lien on a permanent pensionable service or post in non-gazetted capacity.

(2) (a) Where the family of the deceased Government servant is eligible for the death-cum-retirement gratuity under rule 50, the Head of Office shall ascertain:—

- (i) if the deceased Government servant had nominated any person or persons to receive the gratuity; and
- (ii) where the deceased Government servant had not made any nomination or the nomination made does not subsist, the person or persons to whom the gratuity may be payable.

(b) The Head of Office shall, then, address the person concerned in Form 10 or Form 11 as may be appropriate who may submit a claim in Form 12.

(3) Where the family of the deceased Government servant is eligible for the contributory family pension under rule 54,—

- (a) the Head of Office shall address the widow or widower in Form 13 for making a claim in Form 14; and
- (b) Where the deceased Government servant is survived only by child or children, the guardian of such child or children may submit a claim in Form 14 to the Head of Office:

Provided that the guardian shall not be required to submit a claim in the said Form on behalf of the unmarried daughter if she has attained the age of eighteen years and such daughter may herself submit a claim in the said Form.

(4) (a) Where the family of the deceased Government servant is eligible for non-contributory family pension under rule 55, the Head of Office shall ascertain:—

- (i) if the deceased Government servant had nominated any member of his family to receive the payment of non-contributory family pension; and
- (ii) where the deceased Government servant had not made any nomination or the nomination made does not subsist, the person to whom the non-contributory family pension may be payable.

(b) The Head of Office shall, then, address the person concerned in Form 15 or Form 16, as may be appropriate, for making a claim in Form 17.

(5) The Head of Office shall furnish to the Audit Officer the following particulars regarding the details of Government dues outstanding against the deceased Government servant, namely:—

- (a) Government dues recoverable out of the gratuity before payment is authorised, that is to say,—
 - (i) contribution towards contributory family pension, if applicable;
 - (ii) Government dues which have been ascertained and assessed;
- (b) amount of gratuity to be held over for adjustment of Government dues which have not been assessed so far.

NOTE.—The amount of gratuity to be held over shall be determined in accordance with the provisions of clauses (b) and (c) of sub-rule (2) of rule 76.

(6) (a) (i) On receipt of the claim or claims, the Head of Office shall complete Form 18 and certify in Part III of that Form as to whether the character, conduct and past service of the deceased Government servant were such as to entitle the family to the favourable consideration of the pension sanctioning authority in the matter of grant of death-cum-retirement

gratuity and non-contributory family pension (if applicable).

(ii) The Head of Office shall also record in Part III of Form 18 his opinion as to whether the service claimed has been established and should be admitted or not.

(iii) Where the Head of Office is not the pension sanctioning authority, he shall obtain the orders of such authority in Form 18.

(b) After completing Form 18, the Head of Office shall send that Form in original to the Audit Officer with a covering letter in Form 19 along with the Government servant's service book and service roll, if any, duly completed upto date and any other documents relied upon for the verification of the service claimed in such a manner that they can be conveniently consulted.

(c) The Head of Office shall retain one copy of the aforesaid Form for his office record.

(d) If the Payment is desired in another circle of audit, Form 18 shall be sent in duplicate to the Audit Officer.

(7) After the documents referred to in sub-rules (5) and (6) have been sent to the Audit Officer concerned, the Head of Office shall draw provisional family pension not exceeding the maximum family pension and three-fourths of the gratuity as indicated in Part I of Form 18 and for this purpose adopt the following procedure, namely:—

- (a) he shall issue a sanction letter in favour of the claimant or claimants endorsing a copy thereof to the Audit Officer indicating the amount of provisional family pension and three-fourths of the gratuity payable under these rules;
- (b) he shall indicate in the sanction letter the amount recoverable out of the gratuity under sub-rule (5);
- (c) after issue of the sanction letter, he shall draw—
 - (i) the amount of provisional family pension; and
 - (ii) the amount of three-fourths of the gratuity after deducting therefrom the dues mentioned in clause (b);

from the Treasury at which the pay and allowances of the establishment are drawn by him.

(8) The Head of Office shall disburse the provisional family pension and gratuity to the claimant or claimants on or after the first day of the month following the month in which the Government servant died.

(9) The payment of provisional family pension shall continue for a period of six months from the date following the date of death of the Government servant unless the period is extended by the Audit Officer under the proviso to sub-rule (1) of rule 80.

(10) The Head of Office shall inform the Audit Officer—

- (a) as soon as the gratuity has been paid to the claimant or claimants, and
- (b) as soon as the provisional family pension has been paid for a period of six months, or for the period extended under the proviso to sub-rule (1) of rule 80, as the case may be.

(11) If the claimant desires the payment of provisional family pension or of gratuity or of both through money order or bank draft, the same shall be remitted to him through money order or bank draft at his cost.

80. Authorisation of final family pension and balance of gratuity in respect of a deceased non-gazetted Government servant referred to in rule 79.—(1) On receipt of the documents referred to in sub-rules (5) and (6) of rule 79, the Audit Officer shall, within a period of six months from the date of death of the non-gazetted Government servant, apply the requisite checks record his audit enforcement on Section 1 of Part IV of Form 18 and assess the amount of final family pension and gratuity:

Provided that if the Audit Officer is, for any reason, unable to assess the amount within the period aforesaid, he shall communicate the fact to the Head of Office under intimation to the Treasury Officer concerned and authorise the Head of Office to continue to disburse the provisional family pension to the claimant for such period as may be specified by the Audit Officer.

(2) (a) If the family pension is payable in his circle of audit, the Audit Officer shall prepare the Pension Payment Order.

(b) The payment of family pension shall be effective from the date following the date on which the payment of provisional family pension ceased.

(c) Arrears of family pension if any, in respect of the period for which family pension was drawn and disbursed by the Head of Office shall also be authorised by the Audit Officer.

(3) (a) The Audit Officer shall authorise the payment of balance of the gratuity after adjusting the amount, if any, outstanding against the deceased Government servant.

(b) The amount of gratuity held over under sub-rule (5) of rule 79 shall be adjusted by the Audit Officer against the Government dues ascertained and assessed subsequently and the balance, if any, shall be released to the claimant or claimants after the expiry of the period referred to in clause (a) of sub-rule (3) of rule 79.

(c) If the balance of gratuity is payable in his circle of audit, the Audit Officer shall prepare an order for its payment.

(4) The fact of the issue of the Pension Payment Order and order for the payment of balance of the gratuity shall be promptly reported to the Head of Office and the documents which are no longer required shall be returned to him.

(5) The Audit Officer may authorise the payment of balance of the gratuity even during the period of the currency of provisional family pension:

Provided that the amount of gratuity has been finally assessed and no recovery of Government dues is outstanding against the deceased Government servant

(6) If the final family pension and the balance of the gratuity are payable in another circle of audit, the Audit Officer shall send a copy of Form 18 along-with the audit enforcement and the last pay certificate, if received, to the Audit Officer of that circle who shall prepare the Pension Payment Order and order for the payment of balance of the gratuity:

Provided that the adjustment of provisional family pension and gratuity drawn and disbursed by the Head of Office shall be made by the Audit Officer in whose circle the provisional payments were made.

(7) If the amount of provisional family pension drawn and disbursed by the Head of Office is found to be in excess of the final family pension assessed by the Audit Officer, it shall be open to the Audit Officer to adjust the excess amount out of the balance of the gratuity, if any, or recover the excess amount

by short payments of family pension payable in future.

(8) If the amount of gratuity disbursed by the Head of Office proves to be larger than the amount finally assessed by the Audit Officer, the gratuitant shall not be required to refund the excess.

CHAPTER X—Sanction of family pension and residuary gratuity in respect of deceased pensioners

81. Sanction of family pension and residuary-gratuity on the death of a pensioner.—(1) Where the Head of Office has received an intimation regarding the death of a retired Government servant who was in receipt of pension, he shall ascertain whether any family pension or residuary gratuity or both is or are payable in respect of the deceased pensioner:

Provided that the Head of Office may, when he considers it necessary so to do, consult the Audit Officer.

(2) (a) (i) If the deceased pensioner is survived by a widow or widower who is eligible for the grant of contributory family pension under rule 54, the amount of contributory family pension as indicated in the Pension Payment Order shall become payable to the widow or widower, as the case may be, from the day following the date of death of the pensioner.

(ii) On receipt of an application from the widow or widower, the Treasury Officer from whom the deceased pensioner was drawing his or her pension shall authorise the payment of contributory family pension to the widow or widower, as the case may be.

(b) (i) Where the deceased pensioner is survived by child or children, the guardian of the child or children may submit a claim in Form 14 to the Head of Office for the payment of contributory family pension:

Provided that the guardian shall not be required to submit a claim in the said Form on behalf of the unmarried daughter if she has attained the age of eighteen years and such daughter may herself submit a claim in the said Form.

(ii) On receipt of a claim from the guardian, the Head of Office shall sanction the contributory family pension in Form 20.

(c) (i) Where a widow or widower in receipt of contributory family pension remarries and has, at the time of remarriage, child or children from the former spouse who is or are eligible for contributory family pension, the remarried individual shall be eligible to draw the contributory family pension on behalf of such child or children if such individual continues to be the guardian of such child or children.

(ii) For the purposes of sub-clause (i), the remarried individual shall apply to the Head of Office on plain paper furnishing the following particulars, namely:—

(A) a declaration that the applicant continues to be the guardian of such child or children;

CHAPTER—Payment of pension

83. Date from which pension becomes payable.—(1) Except in the case of a Government servant to whom the provisions of rule 37 apply and subject to the provisions of rules 9, 65 and 74 a pension other than family pension shall become payable from the date on which a Government servant ceases to be borne on the establishment, or from the date of his application for pension in Form 5, whichever is later.

Provided that the pension sanctioning authority may condone the delay in the submission of the application for pension if such authority is satisfied that the Government servant was prevented by sufficient cause from making the application and where the delay is condoned the pension shall take effect from the date of retirement.

Pension including family pension shall be payable for the day on which its recipient dies.

(B) the date of remarriage;

(C) the name and date of birth of the child; or children from the former spouse;

(D) the Treasury from where payment of contributory family pension on behalf of such child or children is desired;

(E) full postal address of the applicant.

(iii) If the remarried individual has, for any reason, ceased to be the guardian of such child or children, the contributory family pension shall become payable to the person entitled to act as guardian of such child or children under the law for the time being in force and such person may submit a claim in Form 14 to the Head of Office for the payment of contributory family pension.

(iv) On receipt of the claim referred to in sub-clause (iii) the Head of Office shall sanction contributory family pension in Form 21.

(d) (i) Where a widow or widower in receipt of contributory family pension dies and leaves behind child or children who is are eligible for contributory family pension, the guardian may submit a claim in Form 14 to the Head of Office for the payment of contributory family pension:

Provided that the guardian shall not be required to submit a claim in the said Form on behalf of the unmarried daughter if she has completed the age of eighteen years and such daughter may herself submit a claim in the said Form.

(ii) On receipt of a claim from the guardian, the Head of Office shall sanction contributory family pension in Form 21.

(3) (a) In case the deceased pensioner was governed by the non-contributory family pension and his death had taken place within five years of his retirement, the non-contributory family pension shall become payable to the eligible member of the family of the deceased pensioner as provided in rule 55 for the unexpired period of five years from the date of retirement of the deceased.

(b) On receipt of a claim in Form 17 from such member, the Head of Office shall sanction the non-contributory family pension for the unexpired period aforesaid.

(4) Where on the death of a retired Government servant a residuary gratuity becomes payable to the family of the deceased under sub-rule (2) of rule 50 the Head Office shall sanction its payment on receipt of a claim or claims in Form 22 from the person or persons eligible to receive the residuary gratuity.

82. Authorisation of payment by Audit Officer.—On receipt of the sanction under rule 80 regarding the payment of family pension or of residuary gratuity or of both, the Audit Officer shall authorise the payment of the same.

4. *Currency in which pension is payable —*

(1) Except as otherwise provided in this rule, all pensions shall be payable in rupees in India.

(2) In the case of a non-Indian Government servant who entered service before the 10th September, 1949, and who on retirement takes up his residence in any of the countries mentioned in column (1) of the Table below, payment of pension, other than death-cum-retirement gratuity and family pension, may be made in sterling at the minimum rate of conversion of 1s 9d to the rupee for the period of such residence through the authority mentioned in the corresponding entry in column (2) of the said table;

Provided that the minimum rate of conversion of 1s 9d to the rupee shall not apply to those territories included in the said Table where the Indian rupee is either legal or current tender or whose currency is at par with the Indian rupee.

Explanation :—For the purposes of this sub-rule, the expression "non-Indian" means a person, who on the date of his retirement, was a citizen of a country other than India.

TABLE

Name of country	Authority for purposes of payment of pension
(1)	(2)
1. Peoples' Democratic Republic of Yemen]	The Chief Accountant, Treasury Aden, Aden.
2. Australia	The High Commissioner for India in Australia, Canberra.
3. Iraq	The First Secretary, Embassy of India, Baghdad.
4. Kenya	The High Commissioner for India in Kenya, Nairobi.
5. Burma	The Accountant General, Burma, Rangoon.
6. Ceylon	The Secretary to the General Treasury, Colombo, Ceylon.
7. Republic of Tanzania]	The High Commissioner for India in Tanzania, Dar-Es-Salam.
8. Malaysia.	The Accountant General, The Treasury Kuala Lumpur, Malaysia.
9. Italy	The First Secretary, Indian Embassy, Rome.
10. New Zealand	The High Commissioner of India in New Zealand, Wellington.
11. Saudi Arabia	The First Secretary, Embassy of India, Jeddah.
12. Singapore	The Accountant General, Singapore.
13. Somalia	The Regional Accountant, The Treasury Hargeisa.
14. United Kingdom	The Chief Accounting Officer, The High Commission of India, London.

(3) A pensioner referred to in sub-rule (2) shall be entitled to convert his pension at the minimum rate from the date he leaves India :

Provided that where the pensioner leaves India within a period of six months of his retirement he shall be entitled to convert his pension at the minimum rate from the date it has been paid in India or if no payment has been made there, from the date of its commencement.

(4) A pensioner referred to in sub-rule (2), who has been allowed to convert his pension at the minimum rate and who returns to India and continues to draw his pension through the concerned authority mentioned in column (2) of the Table below that sub-rule, shall be allowed the benefit of the minimum rate for a period of six months from the date of such return.

(5) Where a pensioner referred to in sub-rule (2) has commuted any portion of his pension after the 4th December, 1928, the pension shall be converted at the rate of exchange prescribed by the President, and to the resulting pension shall be added, so long as he remains entitled to the minimum rate, the difference between the values of the full pension (less any portion commuted before the 5th December, 1928) converted at that rate and at the rate of exchange prescribed by the President respectively.

(6) An Indian pensioner, who retired from service before the 12th June, 1956 and who, before that date, took up residence in any of the countries mentioned in column (1) of the Table below sub-rule (2), shall continue to enjoy the concession of conversion of his pension into sterling at the minimum rate of 1s 9d to the rupee during the continuance of his residence in such territory :

Provided that the minimum rate of conversion of rs 9d to the rupee shall not apply to those territories included in the said Table where the Indian rupee is either legal or current tender or whose currency is at par with the Indian rupee.

85. Manner of payment of gratuity and pension.—(1) Except as otherwise provided in these rules, a gratuity shall be paid in lump sum.

(2) A pension fixed at monthly rates shall be payable monthly on or after the first day of the following month.

86. Application of Treasury Rules.—Save as otherwise provided in these rules, the Treasury Rules of the Central Government shall apply in regard to the procedure of payment.—

- (i) of gratuity,
- (ii) of pension,
- (iii) of pension undrawn for more than a year, and
- (iv) of pension in respect of a deceased pensioner.

CHAPTER XII

Miscellaneous

87. Interpretation.—Where any doubt arises as to the interpretation of these rules, it shall be referred to the Government in the Ministry of Finance for decision.

88. Power to relax.—Where any Ministry or Department of the Government is satisfied that the operation of any of these rules causes undue hardship in any particular case, that Ministry or Department, as the case may be, may, by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner :

Provided that no such order shall be made except with the concurrence of the Ministry of Finance.

89. Repeal and saving.—(1) On the commencement of these rules, every rule, regulation or order including Office Memorandum (hereinafter referred to in this rule as the old rule) in force immediately before such commencement shall, in so far as it provides for any of the matters contained in these rules, cease to operate.—

(2) Notwithstanding such cessation of operation—

- (a) (i) every nomination for the payment of death-cum-retirement gratuity, or of non-contributory family pension,
- (ii) every form regarding the details of family of a Government servant for the purpose of contributory family pension, and
- (iii) every formal application for the sanction of pension,

which a Government servant had made or given under the old rule shall be deemed to have been made or given under the corresponding provisions of these rules;

(b) any nomination for the payment of death-cum-retirement gratuity or of non-contributory family pension, any form regarding the details of family of a Government servant for the purpose of contributory family pension or any formal application for the sanction of pension, required to be made or given by a Government servant under the old rule but not made or given before the commencement of these rules shall be made or given after such commencement in accordance with the provisions of these rules;

(c) any case which pertains to the sanction of pension to a Government servant who had retired before the commencement of these rules and is pending before such commencement shall be disposed of in accordance with the provisions of the old rule as if these rules had not been made;

(d) any case which pertains to the sanction of death-cum-retirement gratuity and family pension to the family of a deceased Government servant or of a deceased pensioner and is pending before the commencement of these rules shall be disposed of in accordance with the provisions of the old rule as if these rules had not been made;

(e) subject to the provisions of clauses (a) and (d), anything done or any action taken under the old rule shall be deemed to have been done or taken under the corresponding provisions of these rules.

FORM-I

(See rule 53 (1))

NOMINATION FOR DEATH-CUM-RETIREMENT GRATUITY

When the Government servant has a family and wishes to nominate one member, or more than one member, thereof.

I..... hereby nominate the person/persons mentioned below who is/are member(s) of my family, and confer on him/them the right to receive, to the extent specified below, any gratuity that may be sanctioned by the Central Government in the event of my death while in service and the right to receive on my death, to the extent specified below, any gratuity which having become admissible to me on retirement may remain unpaid at my death :—

Original nominee(s)			Alternate nominee(s)		
Name and addresses of nominee/nominees.	Relationship with the Government servant.	Age	Amount or share of gratuity payable to each*	Name, address, relationship and age of the persons or persons, if any, to whom the right conferred on the nominee shall pass in the event of the nominee predeceasing the Government servant or the nominee dying after the death of the Government servant but before receiving payment of gratuity	Amount of share of gratuity payable to each %
1.	2	3	4	5	6

This nomination supersedes the nomination made by me earlier on _____ which stands cancelled.

Note :—(i) The Government servant shall draw lines across the blank space below last entry to prevent the insertion of any name after he has signed.
(ii) Strike out which is not applicable.

Dated this day of 197
at

Witnesses to signature

1.....
2.....

Signature of Government servant.

g This column should be filled in so as to cover the whole amount of the gratuity.

% The amount/share of the gratuity shown in this column should cover the whole amount/share payable to the original nominee(s)

(To be filled in by the Head of Office/Audit Officer)

Nomination by
Designation
Office

Signature of Head of Office/Audit Officer

Date
Designation

PROFORMA FOR ACKNOWLEDGING THE RECEIPT OF THE NOMINATION FROM BY THE HEAD OF OFFICE/AUDIT OFFICER.

To

.....
.....

Sir,

In acknowledging the receipt of your nomination dated the/cancellation dated the of the nomination made earlier in respect of gratuity in Form I am to state that it has been fully placed on record.

Place.....
Dated the

Signature of Head of Office/
Audit Officer
(Designation)

NOTE:—The Government servant is advised that it would be in the interest of his nominees if copies of the nominations and the related notices and acknowledgements are kept in safe custody so that they may come into the possession of the beneficiaries in the event of his death.

FORM 2

[See rule 53 (1)]

Nomination for Death-Cum-Retirement Gratuity

When the Government servant has no family and wishes to nominate one person or more than one person.

I, having no family, hereby nominate the person/persons mentioned below and confer on him/them the right to receive, to the extent specified below, any gratuity that may be sanctioned by the Central Government in the event of my death while in service and the right to receive on my death, to the extent specified below, any gratuity which having become admissible to me on retirement may remain unpaid at my death :—

Original nominee(s)				Alternate nominee(s)	
Name and addresses of nominee/nominees.	Relationship with Government Servant.	Age	Amount or share of gratuity payable to each*	Name, address relationship and age of the person or persons, if any to whom the right conferred on the nominee preceasing the Government Servant or the nominee dying after the death of the Government servant but before receiving payment of gratuity.	Amount of share of gratuity payable to each%
I	2	3	4	5	6

This nomination supersedes the nomination made by me earlier on which stands cancelled.

NOTE :—(i) The Government servant should draw lines across blank space below the last entry to prevent the insertion of any name after he has signed.

(ii) Strike out which is not applicable.

FORM 3

[See rule 54 (12)]

Details of Family

Name of the Government servant :

Designation :

Date of birth :

Date of appointment :

Details of the members of my family* as on.....

Sl. No.	Names of the members of 'family'*	Date of Birth	Relationship with the Officer	Initials of the Head of Office	Remarks
1	2	3	4	5	6
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					

I hereby undertake to keep the above particulars up-to-date by notifying to the Audit Officer/Head of Office any addition or alteration.

(Signature of Government servant)

Place:
Dated the

*Family for this purpose means

(a) wife, in the case of a male Government servant;

(b) husband, in the case of a female Government servant;

(c) sons below eighteen years of age and unmarried daughters below twenty-one years of age, including such son or daughter adopted legally before retirement.

NOTE :— Wife and husband shall include respectively judicially separated wife and husband.

FORM-4

[See rule 55(7)]

Nomination for Non-contributory Family Pension

I.....hereby nominate the persons mentioned below, who are members of my family to receive in the order shown below the non-contributory family pension which may be granted by the Central Government in the event of my death after completion of ten years qualifying service.

Name and Address of nominee	Relationship with the Government servant	Age	Whether married or unmarried.
.....

This nomination supersedes the nomination made by me earlier on.....which stands cancelled.

NOTE :— The Government servant should draw lines across blank space below the last entry to prevent the insertion of any name after he has signed.

Dated this.....day of.....197.....
at.....

Witnesses to signature

Signature of Government servant.

1.....

Designation.....

2.....

Nomination by

(To be filled in by the Head of Office/Audit Officer)
Signature of
Head of Office/Audit OfficerDesignation,
Office.....Dated.....
Designation.....

PROFORMA FOR ACKNOWLEDGING THE RECEIPT OF THE NOMINATION FORM BY THE HEAD OF OFFICE/AUDIT OFFICER

To
.....
.....

Sir,

In acknowledging the receipt of your nomination dated the.....cancellation dated the.....of the nomination made earlier in respect of non-contributory family pension in Form.....I am to state that it has been duly placed on record.

Signature of Head of Office/Audit Officer
Designation

Place :

Dated the.....

FORM-5

[See rules 58 (1), 63 (1), 66 and 82(1)]
Application for Pension

From

.....
.....

To

.....
.....

Subject :—Application for sanction of pension.

Sir,

I beg to say that I am due to retire from service with effect from the....., my date of birth being..... I therefore request that steps may kindly be taken with a view to the pension and gratuity admission to me being sanctioned by the date of my retirement. I desire to draw my pension from Treasury.

2. I hereby declare that I have neither applied for, nor received, any pension or gratuity in respect of any portion of the service qualifying for this pension and in respect of which pension and gratuity are claimed herein nor shall I submit an application hereafter without quoting a reference to this application and the orders which may be passed hereon.

3. I enclose herewith :—

- (i) two specimen signature of mine, duly attested;
- @(ii) three copies of a passport size joint photograph with my wife/husband;
- *(iii) two slips each bearing my left hand thumb and finger impressions, duly attested;
- (iv) two slips showing the particulars of my height and identification marks, duly attested.

**4. My present address is and my address after retirement will be

(Signature)

Designation

Place :

Dated the

@ Only two copies of pass port size photograph of self need be furnished :

- (i) if the Government servant is governed by rule 54 of the Central Civil Services (Pension) Rules, 1972, and is unmarried or a widower or widow;
- (ii) if the Government servant is governed by rule 55 of the Central Civil Services (Pension) Rules, 1972.

*This is required only in the case of a person who is not literate enough to sign his name. If such a Government servant on account of physical disability is unable to give left hand thumb and finger impressions, he may give the thumb and finger impressions of the right hand. Where a Government servant has lost both the hands he may give his toe impressions. Impressions should be duly attested.

**Any subsequent change of address should be notified to the Audit Officer/Head of Office.

FORM-6

[See rules 60 (1), 63 (3), 69 and 73(7)]

Form for Sanctioning Pension

(To be sent in duplicate if payment is desired in a different circle of audit).

1. Name of the Government servant.

2. Father's name (and also husband's name in the case of a female Government servant).

3. (a) Present or last appointment, including name of establishment.

(i) Substantive

(ii) Officiating, if any.

(b) Remarks by the Receiving Authority.

(i) As to the character, conduct and past service of the Government servant.

Good/Fair

Indifferent/Bad

(ii) Explanation of any suspension or degradation.

(iii) Any other remarks.

(iv) Specific opinion of the Receiving Authority whether the service claimed is established and should be admitted or not.

4. Orders of the pension sanctioning authority

(a) The undersigned having satisfied himself that the service of Shri/Shrimati/Kumari..... has been thoroughly satisfactory hereby orders the grant of the full pension/death-cum-retirement gratuity/service gratuity which may be accepted by the Audit Officer as admissible under the Central Civil Services (Pension) Rules, 1972

OR

The undersigned having satisfied himself that the service of Shri/Shrimati/Kumari..... has not been thoroughly satisfactory hereby orders that the full pension or gratuity or both which may be accepted by the Audit Officer as admissible under the Central Civil Services (Pension) Rules, 1972 shall be reduced by the specified amount or percentage indicated below :—

Amount of reduction in the pension.....

Amount of reduction in the gratuity.....

The grant of pension or gratuity shall take effect from.....

(b) In the event of death of Shri/Shrimati..... after retirement a contributory family pension of Rs. will be admissible to Shrimati/Shri..... under rule 54 of the Central Civil Services (Pension) Rules, 1972

(c) The following service of the Government servant has been approved for the grant of additional pension under rule 46 of the Central Civil Services (Pension) Rules, 1972

Post/Posts held.....

Period of service.....

(d) This order is subject to the condition that if the amount of Pension as authorised be afterwards found to be in excess of the amount to which the Government servant is entitled under the Central Civil Services (Pension) Rules, 1972, he/she shall be called upon to refund such excess.

(e) The pension and gratuity are chargeable to the Head of Account.....

Place.....

Signature and designation of the pension

Dated the

sanctioning authority.

FORM-7

[See rules 62, 63 (6), 66 (1), 67 (1) 68, 69 (2) and (3) 71 (1) and 73 (1) and (7)].

Form for Assessing Pension and Gratuity

(To be sent in duplicate if payment is desired in a different circle of audit).

PART I

1. Name of the Government servant.
2. Father's name (and also husband's name in the case of a female Government servant)
3. Date of birth (by Christian era).
4. Religion and nationality .
5. Permanent residential address showing village/town, district and State.
6. Present or last appointment including name of establishment:—
 - (i) Substantive.....
 - (ii) Officiating, if any.....
7. Date of beginning of service.
- 8 Date of ending of service.
9. (i) Total period of military service for which pension/gratuity was sanctioned.
(ii) Amount and nature of any pension/gratuity received for the military service.
10. Amount and nature of any pension/gratuity received for previous civil service.
11. Government under which service has been rendered in order of employment. YMD
12. Interruption and non-qualifying service.
13. Length of qualifying service.
14. Class of pension or service gratuity applied for by the Government servant and cause of application. (In case of invalid pension medical certificate to be attached).
15. Whether the Government servant is a pre-1938 entrant and Chapter VI of the Central Civil Services (Pension) Rules, 1972, applies to him.
16. Emoluments reckoning for gratuity.
17. Average emoluments reckoning for pension.
18. Date on which Government servant applied for pension in Form 5 .
19. Proposed pension.
20. Proposed death-cum-retirement gratuity.
21. Proposed service gratuity, if any .
22. Date from which pension is to commence.
23. Proposed amount of the provisional pension if departmental or judicial proceeding is instituted against the Government servant before retirement.
24. Whether nomination made for
 - (i) Death-cum-retirement gratuity.
 - (ii) Non-contributory family pension, if applicable .
25. Whether the Government servant has paid all the Government dues.
26. Whether contributory family pension applies to the Government servant, and if so:—
 - (i) emoluments reckoning for contributory family pension.
 - (ii) the amount of contribution to be recovered out of the gratuity.
 - (iii) the amount of the contributory family pension becoming payable to the wife/husband of the Government servant in the event of his/her death after retirement.
 - (iv) the name of wife/husband.
 - (v) Date of birth of wife/husband.
27. Height.
28. Identification marks.
29. Place of payment of pension/gratuity (Treasury or Sub-Treasury).
30. Head of Account to which pension and gratuity are debit able.

Place.....

Dated the

Signature of Head of Office/Audit
Officer,

PART II

Section I

Details of service (Showing interruption of Shri/Shrimati/Kumari.....
Date of birth.....

Establishment	Appointment	Officiating/ Substantive	Date of beginn- ing of service	Date of ending of service	Period recko- ning as service	Period not reckoning as service	Remarks by Audit Officer
			Y.M.D.	Y.M.D.	Y.M.D.	Y.M.D.	
I	2	3	4	5	6	7	8
Total period of service.....							

Note:— 1. If the Government servant has rendered any military service which qualifies for civil pension, date of beginning and date of ending of each period of such service should be indicated.
2. The Audit Officer should record briefly in column 8 his reasons for disallowing any service claimed. Any other disallowance should be recorded with reason therefor in the audit enforcement in Section I of Part III of this Form.

Section II

*Emoluments Drawn During the Last Three years of Service

Post held From	To	Pay	Personal/Special Pay
Average emoluments :—			

* In a case where the last three years include some period not to be reckoned for calculating average emoluments an equal period backwards has to be taken for calculating the average emoluments.

Section III

Details of non-qualifying service

From	To
------	----

1. Interruption (s)
2. Extraordinary leave not qualifying for pension.
3. Period of suspension not treated as qualifying.
4. Any other service not treated as qualifying.

TOTAL

Section IV

Period of service not verified with reference to acquittance Rolls.

Whether the above period has been verified in accordance with the provisions of rule 67 of the Central Civil Service (Pension) Rules, 1972

PART III

Section I

Audit enforcement

1. Total period of qualifying service which has been accepted for the grant of superannuation/retiring/invalid/compensation/compulsory retirement pension/gratuity, with reasons for disallowance if any other than disallowance indicated in Part II of this Form.

NOTE:—Service for the period commencing from _____ and upto the date of retirement has not yet been verified; this should be done before the Pension Payment Order is issued.

2. Amount of superannuation/retiring/invalid/compensation/compulsory retirement pension/gratuity, that has been admitted.
3. Amount of superannuation/retiring/invalid/compensation/compulsory retirement pension/gratuity, admissible after taking into account reduction, if any, in pension and gratuity made by the pension sanctioning authority.
4. Total period of qualifying service which has been approved for the grant of additional pension.
5. The amount of additional pension, if any, that has been admitted.
6. The date from which additional pension is admissible.
7. The date from which superannuation/retiring/invalid/compensation/compulsory retirement pension/gratuity is admissible.
8. Head of Account to which superannuation/retiring/invalid/compensation/compulsory retirement pension and additional pension gratuity is chargeable.

9. The amount of contributory family pension becoming payable to the entitled members of the family in the event of death of the Government servant after retirement.

Accounts Officer-

Assistant Accountant General.

Section II

1. Name of the Government servant.
2. Date of submission of Form 5 by the Government servant.
3. Class of pension or gratuity.
4. Pension sanctioning authority.
5. Amount of pension sanctioned.
6. Amount of gratuity sanctioned.
7. Date of commencement of pension.
8. Date of sanction.
9. Amount of contributory family pension admissible in the event of the death of the Government servant after retirement.
10. Amount recoverable from gratuity under sub-rule (4) of rule 50 of the Central Civil Services (Pension) Rules, 1972.
11. The amount of cash deposit or the amount of gratuity held over for adjustment of unassessed Government dues.

PART IV

Instructions.

1. *Average emoluments*.—The calculation of average emoluments, mentioned in item 17 of Part I should be based on the actual number of days contained in each month.

2. Compensation pension or gratuity—

- (a) If the application is for a compensation pension or gratuity the particulars of the savings effected should be fully stated against item 14 of Part I of this Form.
- (b) State why employment was not found elsewhere.

3. Details of service—

- (a) Give date, month and year of the various appointments, promotions and cessations. For the purpose of adding towards broken-periods, a month is reckoned as thirty days.
- (b) All periods not reckoned as service should be distinguished.

4. Identification marks—Specify a few conspicuous marks, not less than two, if possible.

5. Name.—When initials or name of the Government servant are or is incorrectly given in the various records consulted, mention this fact in the letter forwarding the pension papers.

6. Date of retirement.—Date of retirement to be indicated in the service book and the Last Pay Certificate, if any.

7. Reinstatement.—In the case of a Government servant who has been reinstated after having been suspended, compulsorily retired, removed or dismissed from service, brief statement leading to his reinstatement should be appended.

8. Alterations.—Alterations to be made in red ink under dated initials of a gazetted government servant.

FORM 8

[See rule 69 (2)]

Form of Letter to the Audit Officer forwarding the Pension Papers of a Government servant.

No.....
Government of India
Ministry of.....
Department/Office.
Dated the.....

To
The Accountant General/Pay and Accounts Officer
.....

Subject :—Pension papers of Shri/Shrimati/Kumari.....for authorisation of pension.

Sir,

I am directed to forward herewith the pension papers (as detailed in the list of enclosures) of Shri/Shrimati/Kumari.....of this Office/Department for further necessary action.

2. The receipt of this letter may be acknowledged.

Yours faithfully,
Head of Office.

List of enclosures

1. Form 6 containing the orders of the pension sanctioning authority and Form 7 with details of service, etc.
2. Medical certificate for invalidation (if the claim is for invalid pension).
3. Service book.
4. Memorandum of average emoluments reckoning for pension.
5. Last Pay Certificate.

6. (a) Two specimen signatures, duly attested by gazetted Government servant or in the case of pensioner not literate enough to sign his name, two slips bearing the left hand thumb and finger impressions, duly attested by a gazetted Government servant, and
 (b) Three copies of passport size joint photograph with wife/husband duly attested by the head of Office.
 (c) Two slips showing the particulars of height and identification marks, duly attested.
7. Application for pension in Form 5.
8. Explanation for delay, if any, beyond one month from the date of retirement of the Government servant in forwarding Forms 6 and 7.
9. When the fact of service in another office is not satisfactorily attested in the Service Book, duly certified abstract from the Head of Office.
10. Written statement, if any, of the government servant as required by rule 67 of the Central Civil Services (Pension) Rules, 1972, duly admitted by the pension sanctioning authority.
- @ Only two copies of passport size photograph of Government servant need be furnished :
 (i) if the Government servant is governed by rule 54 of the Central Civil Services (Pension) Rules, 1972, and is unmarried or a widower or a widow
 (ii) if the Government servant is governed by rule 55 of the Central Civil Services (Pension) Rules, 1972.

FORM 9

[See rule 76 (1)]

Form of Surety Bond

In consideration of the President of India (hereinafter called the "Government" which expression shall include his successors and assigns) having agreed to settle the final accounts of Shri/Shrimati without production of a "No Demand Certificate" from the Director of Estates, I hereby stand surety (which expression shall include my heirs, executors and administrators) for payment by the said of rent and other dues in respect of residence now allotted to him/her by the government and also for any residence that may be allotted or that was allotted to the said from time to time by the Government. I, the surety, further agree and undertake to indemnify the Government against all loss and damage until delivery of vacant possession of the above-said residence is made over to the Government.

I hereby also stand surety for any amounts that may be due by the said to the Government by way of over payment of pay, allowances, leave salary, advances for conveyance, house-building or other purposes or any other dues.

The obligation undertaken by me shall not be discharged or in any way affected by an extension of time or any other indulgence granted by the Government to the said

This guarantee shall remain in force till,

(i) the "No Demand Certificate" is issued by the Director of Estates in favour of the said

(ii) the Head of Office in which the said was last employed, and in case he/she was drawing pay and allowances on gazetted government servants bill forms the concerned Audit Officer has certified that nothing is now due to the Government from the said

The stamp duty on this instrument shall be born by the Government.

Signature of Surety.

Signed and delivered by the said surety.

at.....

this..... day of.....
in the presence of :

1. Signature.....
Address and occupation of witness.....
.....

2. Signature.....

Address and occupation of witness.....

Certified that Shri/Shrimati..... is a permanent Government servant

Signature of the
Head of the Department or Head of Office
in which the surety is employed.

This bond is hereby accepted.

(Signature and designation)
for and on behalf of the President of India.

FORM 10

[See rules 77(3) and 79(2)]

Form of Letter to the Member or Members of the Family of a deceased Government Servant where valid nomination for the grant of the death-cum-Retirement Gratuity Exists.

No.
 Government of India
 Ministry of
 Department of
 Dated the _____

To _____

SUBJECT—Payment of death-cum-retirement gratuity in respect of the late Shri/Shrimati_____

Sir/Madam,

I am directed to state that in terms of the nomination made by the late Shri/Shrimati_____, (Designation) in the Office/Department/Ministry of_____, a death-cum-retirement gratuity is payable to his/her nominee(s). A copy of the said nomination is enclosed herewith.

2. I am to request that a claim for the grant of the gratuity may be submitted by you in the enclosed Form 12.

3. Should any contingency have happened since the date of making the nomination, so as to render the nomination invalid in whole or in part, precise details of the contingency may kindly be stated.

Yours faithfully,

Head Office/Audit Officer.

FORM 11

[See rules 77(3) and 79(2)]

Form of letter to the Member or Members of the Family of a deceased Government Servant where valid Nomination for the grant of the death-cum-Retirement Gratuity does not Exist.

No.
 Government of India,
 Ministry of _____
 Department of _____
 Dated the _____

To _____

SUBJECT—Payment of death-cum-retirement gratuity in respect of the late Shri/Shrimati_____

Sir/Madam,

I am directed to say that in terms of rule 50 of the Central Civil Services (Pension) Rules, 1972, a death-cum-retirement gratuity is payable to the following members of the family of late Shri/Shrimati_____, (Designation) in the Office/Department/Ministry of_____, in equal shares:—

(i) Wife/husband
 (ii) Sons }
 (iii) unmarried daughters } including step children and adopted children.

2. In the event of there being no surviving member of the family as indicated above, the gratuity will be payable to the following members of the family in equal shares:—

(i) widowed daughters including step daughters and adopted daughters.

(ii) father, } including adoptive parents in case of individuals whose personal law permits adoption.
 (iii) mother, }

(iv) brother below the age of eighteen years and unmarried widowed sisters including step brothers and step sisters.
 (v) married daughters, and
 (vi) children of a re-deceased son.

It is requested that a claim for the payment of gratuity may be submitted in the enclosed Form 12 as soon as possible.

Yours faithfully,

Head of Office /Audit Officer.

FORM 12

[See rules 77(3) and 79(2)]

FORM OF APPLICATION FOR THE GRANT OF THE DEATH-CUM-RETIREMENT GRATUITY ON THE DEATH OF A GOVERNMENT SERVANT.

(To be filled in separately by each applicant)

1. Name of the applicant.
2. (i) Name of the guardian in case the applicant is a minor.
(ii) Date of birth of guardian.
3. Name of the deceased Government servant.
4. Date of death of the Government servant.
5. Office/Department/Ministry in which the deceased served last.
6. Relationship with the deceased Government servant.
7. Date of birth of the applicant.
8. Name of the Treasury or Sub-Treasury at which payment is desired.
9. Full address of the applicant.
10. Signature or thumb impression of the applicant. (To be furnished in a separate sheet duly attested).

11. *Attested by	Name	Full address	Signatures
	(i)		
	(ii)		
12. Witness	(i)		
	(ii)		

*Attestation should be done by two gazetted Government servants or two or more persons of respectability in the town, village Pargana or in which the applicant resides.

FORM 13

[See rule 77(4) and 79(3)]

FORM OF LETTER TO THE WIDOW/WIDOWER OF A DECEASED GOVERNMENT SERVANT FOR GRANT OF CONTRIBUTORY FAMILY PENSION.

No. _____
 Government of India _____
 Ministry of _____
 Department of _____
 Date the _____

To

Shrimati/Shri _____

SUBJECT:—Payment of Contributory Family Pension in respect of late Shri/Shrimati_____

Sir/Madam,

I am directed to say that in terms of rule 54 of the Central Civil Services (Pension) Rules, 1972, a contributory family pension is payable to you as widow/widower of the late Shri/Shrimati_____, (Designation)_____, in the Office/Department/Ministry of _____.

2. You are advised that a claim for the grant of contributory family pension may be submitted in the enclosed Form 14.
3. The contributory family pension will be payable till your death or re-marriage whichever event occurs earlier. In the event of your death or re-marriage, the contributory family pension shall be granted to the child, or children, if any, through the guardian.

Yours faithfully,

Head of Office/Audit Officer.

FORM-14

[See rules 77(4), 79(3) and 81(2)]

FORM OF APPLICATION FOR THE GRANT OF CONTRIBUTORY FAMILY PENSION ON THE DEATH OF A GOVERNMENT SERVANT/PENSIONERS.

1. Name of the applicant
 - (i) Widow/Widower,
 - (ii) Guardian if the deceased person is survived by child or children.
2. Name and age of surviving widow/widower and children of the deceased Government servant/pensioner.

S.No.	Name	Relationship with the deceased person	Date of birth by Christian era
(1)			
(2)			
(3)			
(4)			
(5)			
(6)			

3. Date of death of the Government servant/pensioner.
4. Office/Department/Ministry in which the deceased Government servant/pensioner served last.
5. If the applicant is guardian, his date of birth and relationship with the deceased Government servant/pensioner.
6. Full address of the applicant.
7. Name of the Treasury or Sub-Treasury at which payment is desired.

8. Enclosures
 - (i) Two specimen signatures of the applicant, duly attested.
(To be furnished in two separate sheets)
 - (ii) Two copies of passport size photograph of the applicant, duly attested.
 - (iii) Two slips each bearing left-hand thumb and finger impressions* of the applicant, duly attested.
(To be furnished in duplicate).
 - (iv) Descriptive Roll of the applicant, duly attested, indicating (a) height and (b) personal marks, if any, on the hand, face etc.
(To be furnished in duplicate).
 - (v) Certificate(s) of age (in original with two attested copies) showing the dates of birth of the children. The certificate should be from the Municipal Authorities or from the Local Panchayat or from the head of a recognised school if the child is studying in such school. (This information should be furnished in respect of such child or children the particulars of whose date of birth are not available with the Audit Officer/Head of Office).
9. Signature or left-hand thumb impressions* of the applicant

10. Attested by

	Name	Full address	Signature
(i)			
(ii)			

11. Witnesses

(i)
(ii)

NOTE: Attestation should be done by two gazetted Government servants or two or more persons of respectability in the town, village or Pargana in which the applicant resides.

*To be furnished in case the applicant is not literate enough to sign his name.

FORM-15

[See rules 77(5) and 79(4)]

FORM OF LETTER TO THE MEMBER OF THE FAMILY OF A DECEASED GOVERNMENT SERVANT WHERE VALID NOMINATION FOR THE GRANT OF NON-CONTRIBUTORY FAMILY PENSION EXISTS.

No. _____
 Government of India
 Ministry of _____
 Department of _____
 Dated the _____

To _____

Subject:—Payment of non-contributory family pension in respect of the late Shri/Shrimati _____ Sir/Madam.

I am directed to state that in terms of the nomination made by the late Shri/Shrimati _____ (Designation) _____ in the Office/Department/Ministry of _____ a non-contributory family pension is payable to you as his/her nominee.

2. I am accordingly to suggest that a claim for the grant of non-contributory family pension may be submitted by you in enclosed Form 17.

3. Should any contingency have happened since the date of making the nomination, so as to render the nomination invalid, precise details of the contingency may kindly be stated.

Yours faithfully,
 Head of Office/Audit Officer.

FORM-16

[See rules 77(5) and 79(4)]

FORM OF LETTER TO THE MEMBER OF THE FAMILY OF A DECEASED GOVERNMENT SERVANT WHERE VALID NOMINATION FOR THE GRANT OF NON-CONTRIBUTORY FAMILY PENSION DOES NOT EXIST.

No. _____
 Government of India
 Ministry of _____
 Department of _____
 Dated the _____

To _____

Subject:—Payment of non-contributory family pension in respect of the late Shri/Shrimati _____ Sir/Madam.

I am directed to state that in terms of rule 55 of the Central Civil Services (Pension) Rules, 1972, a non-contributory family pension is payable to the family of the late Shri/Shrimati _____ (Designation) _____ in the Office/Department/Ministry of _____ as follows:

- (a) (i) to the eldest surviving widow or to the husband;
 (ii) failing a widow/husband, to the eldest surviving son;
 (iii) failing (i) and (ii) above, to the eldest surviving unmarried daughter; and
 (iv) failing these, to the eldest surviving widowed daughter, and
- (b) if there are no surviving members of the family as at clause (a) above
 - (i) to the father;
 - (ii) failing the father, to the mother;
 - (iii) failing the father and mother, to the eldest surviving brother below eighteen years of age;
 - (iv) failing (i), (ii) and (iii) above, to the eldest surviving unmarried sister;
 - (v) failing the above, to the eldest surviving widowed sister.

(c) No non-contributory family pension is payable to a person mentioned in clause (b) above without production of reasonable proof that such person was dependent on the deceased for support.

2. I am to suggest that a claim for the non-contributory family pension may be submitted in the enclosed Form 17, as soon as possible. If you have a prior claim to it in accordance with the gradation given above, you are requested to furnish an affidavit to the effect that there is no other surviving member of the family of Shri/Shrimati _____ ranking above you in the order given in the first paragraph. If, in the light of the above gradation, you have no prior claim, to the non-contributory family pension, you are requested to intimate this Office/Department/Ministry the name, address and relationship with the deceased, of the person who according to your knowledge has a prior claim to the non-contributory family pension. Any false information given or declaration made by you in this connection will render you liable to legal action.

Yours faithfully,
 Head of Office/Audit Officer.

FORM 17

[See rules 77(5), 79(4) and 81(3)]

Form of Application for the Grant of Non-Contributory Family Pension on the Death of a Government Servant/Pensioner

1. Name of the applicant.
2. (i) Name of the guardian in case the applicant is a minor.
(ii) Relationship of the guardian with the applicant.
3. Name of the deceased Government servant/pensioner.
4. Relationship the applicant with the deceased Government servant/pensioner.
5. Date of death of the government servant/pensioner.
6. Office/Department/Ministry in which the deceased served last.
7. (i) Date of birth of the applicant.
(ii) Date of birth of the guardian in case the applicant is a minor.
8. Full address of the applicant/guardian.
9. Name of the Treasury or Sub-Treasury at which payment is desired.
10. *Enclosures*
 - (i) Two specimen signatures of the applicant, duly attested
(To be furnished on two separate sheets)
 - (ii) Two copies of a passport size photograph of the applicant, duly attested.
 - *(iii) Two slips each bearing left hand thumb and finger impressions of the applicant, duly attested.
 - (iv) Descriptive Roll of the applicant, duly attested, indicating (a) height and (b) personal marks, if any, on the hand, face, etc.
(To be furnished in duplicate.)
 - (v) If the applicant belongs to a category mentioned at (b) of item 11, he/she should produce reasonable proof of his/her dependence on the deceased Government servant/pensioner for support.
 - (vi) If the applicant is a minor brother of the deceased Government servant/pensioner, certificate of age (in original with two attested copies) showing the date of birth should be furnished (The original will be returned to the applicant after necessary verification).
 - (vii) Affidavit (Please see paragraph 2 of Form 16).

11. Names and ages of surviving kindred of the deceased Government servant/pensioner:—

Name

Date of birth by Christian era.

- (a) Widows/husband sons.
Unmarried daughters widowed daughters.
- (b) Father
Mother
Brothers below the age of eighteen years
Unmarried sisters.
Widowed sisters.

12. Signature or thumb impression *of the applicant

13. Attested by

Name

Full address

Signature

(i)
(ii)

14. Witnesses

(i)
(ii)

NOTE 1:— Attestation should be done by two gazetted Government servants or by two or more persons of respectability in the town, village or Pargana in which the applicant resides.

NOTE 2:— If the applicant is a minor, the enclosures against item 10(i) to (iv) are to be furnished by the guardian,

*To be furnished in case the applicant is not literate enough to sign his name.

FORM 18

[See rules 77(6) and (7), 79(6) and (7) and 80(6)]

FORM FOR ASSESSING AND SANCTIONING FAMILY PENSION AND DEATH-CUM-RETIREMENT GRATUITY WHEN A GOVERNMENT SERVANT DIES WHILE IN SERVICE
(To be sent in duplicate if the payment is desired in a different circle of audit).

PART I

1. Name of the deceased Government servant.
2. Father's name (and also husband's name in the case of a female Government servant).
3. Date of birth (by Christian era).
4. Date of death (by Christian era).
5. Religion and nationality.
6. Office/Department/Ministry in which last employed.
7. Appointment held last
 - (i) substantive
 - (ii) officiating
8. Date of beginning of service.
9. Date of ending of service.
10. (i) Total period of military service for which pension/gratuity was sanctioned.
(ii) Amount and nature of any pension/gratuity received for the military service.
11. Amount and nature of any pension received for previous civil service, if any.
12. Government under which service has been rendered in order of employment.
13. Interruption and non-qualifying service.
14. Length of qualifying service.
15. Whether the deceased Government servant was a pre-1938 entrant and Chapter VI of the Civil Services (Pension) Rules, 1972 applied to him.
16. Emoluments reckoning for gratuity.
17. Proposed death-cum-retirement gratuity.
18. Whether nomination made for:—
 - (i) Death-cum-retirement gratuity.
 - (ii) Non-contributory family pension, if applicable.
19. If non-contributory family pension applies and the Government servant had rendered more than ten years qualifying service:—
 - (i) "Average emoluments" for pension, if the Government servant had retired on the date following the date of his death.
 - (ii) Proposed pension.
 - (iii) Proposed-non-contributory family pension.
 - (iv) Period of tenability of non-contributory family pension.
20. If contributory family pension applies:—
 - (i) Proposed contributory family pension.
 - (ii) Period of tenability of contributory family pension.

Y M. D.

21. Persons to whom family pension (contributory or non-contributory) is payable:
Name
Relationship with the deceased Government servant.
Full postal address.
22. Persons to whom death-cum-retirement gratuity is payable :
Name Amount of the share of the death-cum-retirement gratuity. Relationship with the deceased. Full postal address.

(1)

(2)

(3)

(4)

(1)
(2)
(3)
(4)
(5)
(6)

23. Name of the guardian who will receive payment of family pension and death-cum-retirement gratuity in the case of minor(s).
24. Government dues, if any, outstanding against the deceased Government servant.
25. Head of account to which family pension and death-cum-retirement gratuity are debitable.
26. Name of the Treasury or Sub-Treasury where the payment of family pension and death-cum-retirement gratuity is desired.

Place.....
Dated the.....

Signature of the Head of Office/Audit Officer

PART II

Section I

Details of service (showing interruption) of the late Shri/Shrimati/Kumari.....

Date of birth :

Date of death :

Establishment 1	Appointment 2	Officiating/ substantive 3	Date of begin- ning of ser- vice 4	Date of end- ing of service 5	Period reck- oning as service Y M D 6	Period not re- ckoning as service Y M D 7	Remarks by the Audit Officer 8
--------------------	------------------	----------------------------------	---	-------------------------------------	---	---	---

Total period of service

NOTE 1. If the deceased Government servant had rendered any military service qualified for civil pension, date of commencement and date of ending of each period of such service should also be indicated.

NOTE 2. The Audit Officer should record briefly in column 8 his reasons for disallowing any service claimed. Any other disallowance should be recorded with reasons therefor in the audit encasement in Section I of Part IV of this Form.

Section II

(To be filled in, if non-contributory family pension is admissible)

*Emoluments drawn during the last three years,

Post held	From	to	Pay	Personal/Special Pay	Average emoluments.
					*In a case where the last three years include some period not to be reckoned for calculating average emoluments an equal period backwards has to be taken for calculating the average emoluments.

Section III

Details of non-qualifying service.

1. Interruption(s).
2. Extraordinary leave not qualifying for pension.
3. Period of suspension not treated as qualifying.
4. Any other service not treated as qualifying.

TOTAL:

Section IV

Period of service not verified with reference to the Acquittance Rolls.

Whether the above period has been verified in accordance with the provisions of sub-rule (4) of rule 67 of the Central Civil Services (Pension) Rules, 1972.

PART III

1. Remarks of the Head of Office

- (1) As to the character, conduct and past service of the deceased Government servant. Good/fair/indifferent/bad.
- (2) Explanation of any suspension or degradation.
- (3) Any other remarks.
- (4) Special opinion of the Head of Office whether the service claimed is established and should be admitted or not.

2. Orders of the pension sanctioning authority

The undersigned having satisfied himself that the service of the late Shri/Shrimati/Kumari _____ was thoroughly satisfactory hereby orders the grant of the full death-cum-retirement gratuity and non-contributory family pension (if applicable) which may be accepted by the Audit Officer as admissible under the Central Civil Services (Pension) Rules, 1972 to the person(s) mentioned in Part I of this Form.

OR

The undersigned having satisfied himself that the service of the late Shri/Shrimati/Kumari _____ was not thoroughly satisfactory hereby orders that the amount of gratuity and non-contributory family pension, if applicable, as may be accepted by the Audit Officer under the Central Civil Services (Pension) Rules, 1972 shall be reduced by the amount specified below before any authority for payment is issued to the person(s) mentioned in Part I of this Form.

Amount of reduction in the gratuity.

Amount of reduction in non-contributory family pension, if applicable.

The grant of gratuity or of family pension or of both shall take effect from _____.

Place _____
Dated the _____

Signature and designation of the pension sanctioning authority.

PART IV

Section I—Audit Enforcement

1. Total period of qualifying service which has been accepted for:—
 - (i) Death-cum-retirement gratuity.
 - (ii) Family Pension (contributory or non-contributory).

Note:—Service for the period commencing from _____ and upto the date of death has not yet been verified; this should be done before pension payment order is issued.

2. Reduction ordered by pension sanctioning authority.
3. Net amount of death-cum-retirement gratuity after taking into account the reduction mentioned in item 2 and other Government dues.
4. Amount of contributory family pension—
 - (i) if death took place before seven years of service.
 - (ii) if death took place after seven years of service, the period of tenability of the enhanced pension.
5. Amount of non-contributory family pension after taking into account the reduction mentioned in item 2 and the period for which it is tenable.
6. The date from which family pension is admissible.
7. Head of Account to which death-cum-retirement gratuity and family pension are chargeable.

Accounts Officer
Assistant Accountant General.

Section II

1. Name of the deceased Government servant.
2. Date of death of the Government servant.
3. Date of submission of claim by the family of the deceased Government servant.
4. Sanctioning authority.
5. Amount of family pension sanctioned.
6. Amount of gratuity sanctioned.
7. Date of sanction.
8. Amount recoverable from gratuity.
9. The amount of gratuity held over for adjustment of unassessed Government dues.

PART V

Instructions

1. *Average emoluments:* The calculation of average emoluments, mentioned in item 19 of Part I of this Form should be based on the actual number of days contained in each month.
2. *Details of service:* (a) Give date, month and year of the various appointments, promotions and cessations. For the purpose of adding towards broken periods, a month is reckoned as thirty days.
(b) All periods not reckoned as service should be distinguished.
3. *Identification Marks:* Specify a few conspicuous marks, not less than two, if possible.
4. *Name:* When initials or the name of the Government servant are or is incorrectly given in the various records consulted, mention this fact in the letter forwarding the pension papers.
5. *Date of death:* Date of death to be indicated in the service book, and the Last Pay Certificate, if any.
6. *Alterations:* Alterations to be made in red ink under dated initials of a gazetted Government servant.

FORM 19

[See rule 79(6)]

Form of Letter to the Audit Officer Forwarding Papers for the grant of Family Pension and Health-cum-Retirement Gratuity to the family of Government Servant who dies while in Service

No.
Government of India
Ministry of
Department/Office
Dated the

To The Accountant General/Pay and Accounts Officer,
.....

SUBJECT :—Grant of family pension and death-cum-retirement gratuity.

Sir, I am directed to say that Shri _____, died on _____ (Designation). His family has become eligible for the grant of family pension and death-cum-retirement gratuity. Form 18 duly completed and containing the orders of the pension sanctioning authority is forwarded herewith for further necessary action.

2. Your attention is invited to the list of enclosures which is forwarded herewith.
3. The receipt of this letter may be acknowledged and this Ministry/Department Office informed that necessary instructions for the disbursement of family pension and death-cum-retirement gratuity have been issued to the Treasury Officer concerned.

Yours faithfully,
Head of Office.

List of enclosures

1. Specimen signature or left hand thumb and finger impressions of the beneficiary, duly attested.
2. Two attested copies of passport size photograph of the beneficiary.
3. Descriptive Roll of the beneficiary, duly attested.

FORM 20

[See rule 81(2)]

Form of Letter Sanctioning Contributory Family Pension to the Child or Children of retired Government Servant who dies after Retirement but does not leave behind a widow/widower

No. _____
 GOVERNMENT OF INDIA.
 MINISTRY OF _____
 DEPARTMENT/OFFICE OF _____
 Dated, the _____

To

The Accountant General/Pay and Accounts Officer,

Sir,

SUBJECT:—Grant of family pension to the child/children.

I am directed to say that Shri/Shrimati..... formerly..... in this Ministry/Department/Office was sanctioned pension
 (Designation)
 Rs..... with effect from..... on his retirement from service.

2. Intimation has been received in this Ministry/Department/Office that Shri/Shrimati..... died on..... and that at the time of death left no widow/widower but was survived by the following children*:-

Sl. No.	Name	Son/daughter	Date of birth in Christian era.	Date from which family pension ceases to be payable.
(1)				
(2)				
(3)				
(4)				
(5)				
(6)				

3. In terms of rule 54 of the Central Civil Services (Pension) Rules, 1972, the amount of contributory family pension has become payable to the children in the order mentioned above. The contributory family pension will be payable on behalf of the minors to Shri/Shrimati..... who is the guardian.

4. Sanction for the grant of contributory family pension of Rs..... per month to the children mentioned above is hereby accorded. The contributory family pension will take effect from..... and subject to the provisions of sub-rule (6) of rule 54 of the Central Civil Services (Pension) Rules, 1972, will be tenable till.....

5. The contributory family pension is debitible to the Head.....

6. Attention is invited to the information furnished in the enclosed list.

7. The receipt of this letter may kindly be acknowledged and this Ministry/Department/Office informed that necessary instructions for the payment of contributory family pension to the guardian have been issued to the Treasury Officer concerned.

Yours faithfully,

(Head of Office)

*The names of children should be mentioned in the order of eligibility mentioned in rule 54 of the Central Civil Services (Pension) Rules, 1972. Children born as a result of marriage which took place before the retirement of the Government servant or children adopted legally before retirement should only be included.

List

1. Permanent address of the guardian.
2. Place of payment (Government Treasury or Sub-Treasury).

Enclosures.

3. Specimen signatures or *left hand thumb and finger impressions of the guardian, duly attested.
4. Two attested copies of a passport size photograph of the guardian.
5. Descriptive Roll of the guardian, duly attested.

*To be furnished in the case of the guardian who is not literate enough to sign his/her name.

FORM 21

[See rule 81(2)]

Form of Letter Sanctioning Family Pension to the Child or Children on the death or re-marriage of a Widow/Widower who was in receipt of Contributory Family Pension

No.
Government of India
Ministry of

Department/Office of

Dated the

To,
The Accountant General/Pay and Accounts Officer,

SUBJECT :—Grant of family pension to the child/children.

Sir,

I am directed to say that Shrimati/Shri widow/widower of late Shri/Shrimati formerly in this Ministry/Department/Office, was sanctioned contributory family pension of (Designation)

1. with effect from the

The contributory family pension was tenable till the death or re-marriage of the widow/widower.

2. Intimation has been received in this Ministry/Department/Office that Shri/Shrimati died/re-married on

3. At the time of death/re-marriage, Shri/Shrimati, had following children :—

Sl. No.	Name	Son/Daughter	Date of birth in Christian era.	Date from which the family pension ceases to be payable.
(1)				
(2)				
(3)				
(4)				
(5)				
(6)				

4. In terms of rule 54 of the Central Civil Services (Pension) Rules, 1972, the amount of contributory family pension has become payable to the children in the order mentioned above. The contributory family pension will be payable on behalf of the minors to Shri/Shrimati who is the guardian.

5. Sanction for the grant of contributory family pension of Rs. per month to the children, mentioned above is hereby accorded. The contributory family pension will take effect from and subject to the provisions of rule 6 of rule 54 of the Central Civil Services (Pension) Rules, 1972 will be tenable till

6. The contributory family pension is debitible to the Head

7. Attention is invited to the information furnished in the enclosed list.

8. The receipt of this letter may kindly be acknowledged and this Ministry/Department/Office informed that necessary instructions for the payment of contributory family pension to the guardian have been issued to the Treasury Officer concerned.

Yours faithfully,
(Head of Office)

*The names of children should be mentioned in the order of eligibility mentioned in rule 54 of the Central Civil Services (Pension) Rules, 1972. Children born as a result of marriage which took place before the retirement of the Government servant or children adopted legally before retirement should only be included.

List

1. Permanent address of the guardian.
2. Place of payment (Government Treasury or Sub-Treasury)

Enclosures

3. Specimen signatures or *left hand thumb and finger impressions of the guardian duly attested.
4. Two attested copies of a passport size photograph of the guardian.
5. Descriptive Roll of the guardian, duly attested.

*To be furnished in the case of the guardian who is not literate enough to sign his/her name.

FORM—22

[See rule 81(4)]

FORM OF APPLICATION FOR THE GRANT OF RESIDUARY* GRATUITY ON THE DEATH OF A PENSIONER.

(To be filled in separately by each applicant).

1. Name of the applicant.
2. (i) Name of the guardian in case the applicant is a minor.
(ii) Date of birth of guardian.
3. Name of the deceased pensioner.
4. Office/Department/Ministry in which the deceased pensioner served last.
5. Date of death of the pensioner.
6. Date of retirement of the deceased pensioner.
7. Amount of monthly pension (including *ad-hoc* increase, if any) sanctioned to deceased pensioner.
8. Amount of death-cum-retirement gratuity received by the deceased pensioner.
9. The amount of pension (including *ad hoc* increase, if any) drawn by the deceased till the date of death.
10. If the deceased had commuted a portion of pension before his death, the commuted value of the pension.
11. Total of items 3, 9 and 10.
12. Amount of death-cum-retirement gratuity equal to 12 times of the emoluments.
13. The amount of residuary gratuity claimed i.e., the difference between the amount shown against item 12 and item 11.
14. Relationship of the applicant with the deceased pensioner.
15. Date of birth of the applicant.
16. Name of the Treasury or Sub-Treasury at which payment is desired.
17. Full address of the applicant.
18. Signature or thumb impression of the applicant (To be furnished in a separate sheet duly attested).@@
19. Attested by :—

Name

Full Address

Signature

(i)

(ii)

20. Witness.

(i)

(ii)

*If a retired Government servant in receipt of service gratuity or pension dies within five years from the date of his retirement from service including compulsory retirement as penalty and the sums actually received by him at the time of his death on account of such gratuity or pension including *ad hoc* increase, if any, together with the death-cum-retirement gratuity and the commuted value of any portion of pension commuted by him are less than the amount equal to 12 times of his emoluments, a residuary gratuity equal to the deficiency becomes payable to the family.

@@When a Government servant had retired before earning a pension, the amount of service gratuity should be indicated.

@@@Attestation should be done by two gazetted Government servants or by two or more persons of respectability in the town, village or Pargana in which the applicant resides.

[No.81-EV/69]

S. P. MAHNA, Dy. Secy.

(Department of Banking)

New Delhi, the 6th March 1972

S.O. 935.—In exercise of the powers conferred by section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government, on the recommendation of the Reserve Bank of India, hereby declares that the provisions of Note (i) appended to Form 'A' in the Third Schedule to the said Act shall not apply in respect of the balance sheet as at the 31st December, 1971 to the State Bank of India, any banking institution notified under section 51 of the said Act, the corresponding new banks constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, and any banking company which, when the value shown in the inner column against any of the sub-heads (ii), (iii), (iv) and (v) of item 4 on the Property and Assets side of the said Form exceeds the market value of the investments under that sub-head, shows separately within brackets the market value of the investments under that sub-head.

[No. F.15(1)-BC/72.]

K. YESURATNAM, Under Secy.

(बैंकिंग विभाग)

नई दिल्ली, 6 मार्च, 1972

एस॰ ए॰ ९३५।—बैंकिंग विभाग अधिनियम, 1949 (1949 का 10) की धारा 53 के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार, भारतीय रिजर्व बैंक की सिक्फारिश पर, एतद्वारा यह घोषित करती है कि उक्त अधिनियम की दीसरी अनुसूची के फार्म 'क' से मंलग्न टिप्पणी (च) के उपबंध आपे बताई गई संस्थाओं के 31 दिसम्बर 1971 तक के तलाट के संबंध में लागू नहीं होगे:—भारतीय स्टेट बैंक, उक्त अधिनियम की धारा 51 के अन्तर्गत अधिसूचित कोई बैंकिंग संस्था, बैंकिंग कम्पनी (उपक्रमों का अजन्त और अन्तरण) अधिनियम, 1970 की धारा 3 के अधीन गठित तदनुसूची नये बैंकिंग तथा कोई ऐसी बैंकिंग कम्पनी जो, उक्त फार्म के सम्पत्ति और परिसम्पत्ति व्यापत की मध्य 4 के उपशीर्षक II, III, IV, और V में से किसी एक के सामने भीतरी स्तम्भ में दिखाये गये मूल्य के उस उपशीर्षक के अन्तर्गत किये गये निवेशों के बाजार मूला से बढ़ जाने पर उस उपशीर्षक के अन्तर्गत किये जाने वाले निवेशों के बाजार मूल्य को अवगत से कोष्ठकों में दिखाये।

[सं. एफ. 15(1)-बी० नो०/72]

कौ. येसुरत्नम्, अवर सचिव।

(Department of Economic Affairs)

(Office of the Controller of Capital Issues)

New Delhi, the 17th March, 1972

S.O. 936.—In exercise of the powers conferred by sub-section (1) of section 6 of the Capital Issues (Control) Act, 1947 (29 of 1947), the Central Government hereby makes the following order further to amend the Capital Issues (Exemption) Order, 1969, namely:—

1. This order may be called the Capital Issues (Exemption) Second Amendment Order, 1972.

2. In the Capital Issues (Exemption) Order, 1969 in sub-clause (iv) of clause 4, after the expression "the Madras Industrial Investment Corporation Ltd.", the words "the State Industrial and Investment Corporation of Maharashtra Limited," shall be inserted.

[No. F. 2(4)-CCI/72].

RAJ K. NIGAM, Addl. Com. of Capital Issues.

(आधिकारिक विभाग)

(पूँजी निर्गम नियंत्रक का कार्यालय)

नई दिल्ली, 17 मार्च, 1972

एस॰ ए॰ 936।—पूँजी निर्गम (नियंत्रण) अधिनियम, 1947 (1947 के 29वें) की धारा 6 की उपधारा (1) द्वारा प्रवत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा पूँजी निर्गम (छूट) आदेश, 1969 में और संशोधन करने के हेतु निम्नलिखित आदेश जारी करती है, अर्थात् :—

1. इस आदेश को, पूँजी निर्गम (छूट) द्वारा संशोधन आदेश, 1972 कहा जायगा।

2. पूँजी निर्गम (छूट) आदेश, 1969 की धारा 4 की उपधारा (IV) में, "ग्राम औद्योगिक निवेश निगम लिमिटेड (भारत इंडस्ट्रियल इंकेमेंट कारपोरेशन लिमिटेड)" के बाद "स्टेट इंडस्ट्रियल एण्ट इंकेमेंट कारपोरेशन आफ महाराष्ट्र निगमेंट" शब्द जोड़ दिये जायेंगे।

[मंज्या एफ. 2(4)-सी०सी०आई०/72]

रा० के० निगम,

अतिरिक्त नियंत्रक पूँजी निर्गम।

(Department of Revenue and Insurance)

ORDERS

STAMPS

New Delhi, the 1st April 1972

S.O. 937.—In exercise of the powers conferred by clause (a) of Sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby remits the duty with which the pro-missory notes of the value of ninety-eight lakhs, five thousand, four hundred and twenty four rupees and forty four paise, executed by the Uttar Pradesh Electricity Board in favour of M/s. Bharat Heavy Electricals Limited, are chargeable under the said Act.

[No. 8/72-Stamps/F. No. 471/23/72-Cus. VII.]

(राज्यव और शीमा विभाग)

आदेश

स्ट्राम्प

नई दिल्ली, 1 अप्रैल, 1972

एस॰ ए॰ १८७।—भारतीय रटामा अधिनियम, 1899 (1899 का 2) की धारा 9 की उपधारा (1) के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा

उत्तम शुल्क से छूट देती है जितना उत्तर प्रदेश विद्युत बोर्ड द्वारा भेससं भारत में द्वारा इंडो-विद्युतलय लिमिटेड के पक्ष में निषादित किए गए अनुदान ताल, पांच हजार रुपए से तीव्रीस रुपए चालाली वंपे के मूल्य के बचन-पत्रों पर उत्तर अधिनियम के प्रधीन गोवर्ण है :

[सं. 8, 72-स्टाम्प/फा०सं. 471/15/72-सीमा-शुल्क-7]

S.O. 938—In exercise of the powers conferred by clause (a) of Sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby remits the duty with which the bonds to the value of fifty-five lakhs of rupees, to be issued by the Gujarat State Financial Corporation, are chargeable under the said Act.

[No. 9/72-Stamps/F. No. 471/15/72-Cus. VII.]

एस० ओ० 939:—भारतीय स्टाम्प अधिनियम, 1899 (1899 फा० 2) की धारा 9 की उपधारा (1) के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा उत्तम शुल्क से छूट देती है जितना केरल वित्तीय निगम द्वारा जारी किए जाने वाले गच्चन साख रुपए के अंकित मूल्य के बन्धपत्रों पर उक्त अधिनियम के अधीन प्रभार्य है ।

द्वारा जारी किए जाने वाले, गच्चन साख रुपए मूल्य के बन्धपत्रों पर उक्त अधिनियम के अधीन प्रभार्य है ।

[ग्र० १०/७२-स्टाम्प/फा०सं. 471/6/72-सीमा-शुल्क 7]

S.O. 939—In exercise of the powers conferred by clause (a) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby remits the duty with which the bonds to the face value of fifty-five lakhs of rupees, to be issued by the Kerala Financial Corporation, are chargeable under the said Act.

[No. 10/72-Stamps/F. No. 471/15/72-Cus. VII.]

K. SANKARARAMAN, Under Secy.

प्र० १० अ० ९३९:—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उपधारा (1) के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा उत्तम शुल्क से छूट देती है जितना केरल वित्तीय निगम द्वारा जारी किए जाने वाले गच्चन साख रुपए के अंकित मूल्य के बन्धपत्रों पर उक्त अधिनियम के अधीन प्रभार्य है ।

[सं. 10/72-स्टाम्प/फा०सं. 471/15/72-सीमा शुल्क 7]

क० गंकरामन, अधर सचिव ।

